

REPORTS OF CASES
DETERMINED
IN THE
COURT OF NIZAMUT ADAWLUT,
FOR 1856.
WITH AN INDEX
VOL. VI. PART II.

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*Errors having been discovered in the case of Baboollah Khan printed in the number containing the reports for December, 1856; the following Errata is therefore published. It is requested that the copies may be corrected accordingly.*

Page 1000, line 18, from the bottom for "*I held*" read "*J. held.*"

Page 1018, line 3, from the top for "*Commissioners*" read "*Commissioner*;" line 4, for "*think*" read "*thinks*;" line 13, for "*Act II. of 1856*" read "*Act II. of 1855*;" line 10, from the bottom for "*these*" read "*them.*"

Page 1019, line 9, from the top for "*natural*" read "*material.*"

Page 1020, lines 25 and 26, from the top omit the words "*one of the parties in the case.*"

Page 1021, line 19, from the top place a period after the word "*witnesses.*"

Page 1022, line 17, from the top for "*set up*" read "*establish.*"



# CASES

## IN THE

### NIZAMUT ADAWLUT

PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

GOVERNMENT AND RAMDHUN DASS

*versus*

GHASSEE LALLA (No. 7,) AND MUSST. LUTKAN  
BEWAH (No. 8.)

Moorsheda-  
bad.

1857.

CRIME CHARGED.—No. 7, 1st count, theft of property belonging to the master of the prosecutor, Ramdhun Dass, valued at Rs. 13,000; 2nd count, knowingly receiving and retaining in possession property acquired by the said theft. (No. 8,) 1st count, knowingly receiving and retaining in possession property acquired by the said theft; 2nd count, being accessory after the fact to the said theft.

January 7.

Case of  
GHASSEE  
LALLA and  
another.

CRIME ESTABLISHED.—Nos. 7 and 8, knowingly receiving and retaining in their possession property acquired by theft.

Appeal re-  
jected.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 16th September, 1856.

*Remarks by the officiating sessions judge.*—On the 3rd August, the above prosecutor reported at the thannah that his master, Kishenchundro Goleecha, had placed in the month of Falgoun a box, containing jewels to the amount of 13,000 Rs. in the *toshakhana* of Seth Sahib in the city of Moorshedabad, and that in Assar, upon opening the box, he found all the jewels were gone.

The magistrate ordered an investigation into this case, and on the 21st idem, the prosecutor deposed at the thannah that he suspected the prisoner No. 7, Ghasee Lalla, as he had lately been expending a large sum of money. On this the darogah proceeded to the prisoner's house to search it, and on arriving

## CASES IN THE NIZAMUT ADAWLUT.

1857.

January 7.

Case of  
GHASSEE  
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there, the prisoner, No. 8, Musst. Lutkan Bewah, (the mother of No. 7,) was observed going away from the house with a brass vessel under her arm, she was apprehended and in this brass vessel were found jewels to the amount of 5,975 Rs. and in a box of the prisoner No. 7, opened by him and the key of which was in his possession, were found two pearls valued at Rs. 80.

Prisoner No. 7, confessed before the darogah to having received all this property from one Ramchand Baboo, and that it was the property of the prosecutor's master. He confessed to the same facts before the magistrate, with the exception of the statement that he knew whose the property was, and admitted receiving the property before this court.

Prisoner, No. 8, confessed before the darogah and the magistrate to her having received from her son the property found upon her, and that he told her it belonged to Seth Sahib, and before this court she said that No. 7, had given her the property, and that she was going to give it to Juggut Seth, when the police seized her.

The prisoner, No. 7, is servant to Juggut Seth, who is the brother of, and lives in the same house as the Seth Sahib, from whose *toshakhana* this property was stolen.

Considering therefore that the theft was a matter of notoriety, and must have been known to Juggut Seth's servants, all of whom had access to this *toshakhana*, and that prisoner, No. 7, was a servant of Juggut Seth's, and that he and his mother, prisoner No. 8, lived in one house together, I must come to the conclusion that they were both cognizant that a theft of the jewels had occurred, and as their mofussil and sudder admissions were fully proved, and also the fact of the property having been found as stated, I convict, in concurrence with the verdict of the

Srishchunder Bidyarutna.  
Gobindkant Bidyabhoosun.  
Mr. M. J. Mascarenhas.

jury,\* both prisoners, viz. No. 7, Ghassee Lalla, and No. 8, Lutkan Bewah, of knowingly receiving and retaining in their possession prop-

erty acquired by the theft of property valued at Rs. 13,000, belonging to the master of the prosecutor, and sentence them, the prisoner No. 7, to five (5) years' imprisonment with hard labor in irons, and the prisoner No. 8, to five (5) years' imprisonment with labor suited to her sex, and the property is to be given up to the prosecutor.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens.) The prisoners urge, in their petition of appeal, that the sessions judge had not taken evidence on their defence, which rested on the allegation, that the property which they admit to have been found in their possession was given to them by the gomashita of the party to whom it belonged. We observe that at the sessions court, the prisoners named no witnesses, and those mentioned in their confessions

before the magistrate were merely those who were present at the finding of the property with them; considering the defence set up, there being no doubt of the property being that which was stolen from the house of the prosecutor's master, we uphold the conviction and sentence.

1857.

January 7.

Case of  
GHASSEZ  
LALLA and  
another.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

GOVERNMENT

*versus*

NOBIN ROY, TRIALS NOS. 14 AND 1.

Nuddea.

1857.

January 8.

Case of  
NOBIN ROY.

Appeal re-  
jected. The  
same prisoner  
was punished  
in two distinct  
cases, one of  
perjury, and  
one of riot, &c.

CRIME CHARGED.—*Trial No. 14 for August.*—Perjury in having on the 1st April, 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the magistrate of Nuddea, that “in the month of Phal-goon, (I do not remember the date) on the day of *shraud* of the mother of Damoodur Baboo, according to the orders of Chundermohun Baboo, while his servants were distributing rice and *dall* to the beggars, Ishan Baboo began to beat and drive them off, they ran and crying *bapreh mareh*, and the people of Chundermohun Baboo made a noise, and an affray ensued between the two parties and both parties began to assault each other and pelt stones, and guns were fired from towards the house of Ishan Baboo and others, and from towards the *natch ghur* of Chundermohun Baboo. I have seen Madhoo Ghose and others in the crowd at the time of affray, and I saw this from the shop of Greedhur Bonick of Nickoshiparah;” and in having on the same date again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the said magistrate that “at the time when the affray which took place between two parties at Nickoshiparah Baboos during the *shraud* of the mother of Damoodur Baboo I was not at Nickoshiparah and I do not know which of the Baboos were at Nickoshiparah, I being at that time at Kishnaghur.” Such statements being contradictory of each other on a point material to the issue of the case.

*Trial No. 1, for September.*—Riot with assault, wounding and plunder of the police and Government money and property amounting to Rs. 166-4-6.

CRIME ESTABLISHED.—*Trial No. 14.*—Perjury.

*Trial No. 1.*—Riot with assault and wounding of the police.

Committing Officer.—Mr. A. Elliot, magistrate of Nuddea.



1857.

January 8.

Case of  
NOBIN ROY.

Tried before Mr. G. D. Wilkins, additional sessions judge of Nuddea, on the 1st September, 1856.

*Remarks by the additional sessions judge.—Trial No. 14.*—The prisoner was a witness in a case before the magistrate in which the Baboos of Nickoshiparah were charged with committing a serious affray amongst themselves, on a dispute regarding the treatment of a large number of Brahmins and common beggars who were present at a *shraud* of one of their relatives. He first declared to the magistrate that he had witnessed personally all that occurred, the beating and driving off of the beggars by Baboo Eshan, the affray that resulted between the adherents of the said Baboo and Baboo Chundermohun; the assaults committed by each of the contending parties; the hurling of bricks and the discharge of fire-arms; and then immediately afterwards on cross-examination by one of the prisoner's mookhtears that he had not been at Nickoshiparah on the day in question or witnessed any affray, &c.

In concurrence with the law officer I convict the prisoner (who has no defence to offer) of having intentionally and deliberately made, on solemn declaration taken instead of an oath, two contradictory statements on a point material to the issue of the case, and I reserve my sentence for the result of another case now under trial in which the prisoner is also concerned.

*Trial No. 1.*—The darogahs of the Kotwali and Augurdeep thannah had executed a warrant of the magistrate for the apprehension of two persons at Plasdanga concerned in the affray which had previously taken place at Nickoshiparah amongst the Baboos of that place, when as they were leaving the village they were set upon a body of armed men in the service of the Baboos, maltreated, and robbed of all the private and Government property they had with them in their *palkees*. Of several persons suspected of having been concerned in this outrage the four entered in this calendar were committed to this court, for trial; but it is both my opinion and that of the law officer that only the prisoner Nobeen Rai was recognised at the time, and that it would not be safe to convict the rest on mere subsequent recognition. Witnesses Nos. 3, 4, 5, 6 and 7, all name Nobeen Rai, as having headed the party, the witnesses Nos. 3 and 6, having implicated him by name the very day after the occurrence, the 29th March last. The affray at Nickoshiparah took place on the 22nd of the preceding month. It has been proved now in three cases that the Nickoshiparah zemindars have been hitherto in the habit of entertaining bodies of armed men for purposes of oppression and violence, this Nobeen Rai being a leader amongst them, and the chief of all having been a notorious dacoit, one Horish Ghose, at this moment awaiting sentence before the sudder Court. Nobeen Rai has been before convicted of affray; and he was two days ago found

guilty of wilful and corrupt perjury, sentence being deferred for the issue of this trial. His defence here is an *alibi*, which the witnesses, he has cited, do not establish. He is sentenced to eight years' imprisonment with labor and without irons, being three years for the perjury and five years under the present charge for "riot with assault and wounding of the police." The rest are acquitted and released.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens.)

*Trial No. 14.*—The charge of perjury has clearly been brought home to the prisoner; indeed his own admissions leave no doubt upon the question. The excuse of fear which he urges is altogether untenable. We confirm the orders of the sessions judge and reject the appeal.

*Trial No. 1.*—The prisoner was clearly identified by the witnesses on whose evidence he has been convicted. Before the sessions he pleads an *alibi*, but this is not supported by the evidence of his witnesses and is opposed to what he stated before the magistrate. We see no reason to interfere with the conviction and sentence.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

GOVERNMENT AND JUGGOBUNDHOO  
CHATTERJEA

*versus*

NILCOMUL CHUCKERBUTTY (No. 1.) RAMCHUNDER BURRORI (No. 2.) AND NURSING SOOTAR (No. 3.)

CRIME CHARGED.—1st count, riot attended with the severe wounding of the prosecutor and plunder of property valued at Co.'s Rs. 2,264-4; 2nd count, forcibly carrying off and illegal confinement of prosecutor and his son Shamachurn Chatterjee.

CRIME ESTABLISHED.—Being accomplices in a riotous attack on the house of Juggobundhoo Chattopadea in which the said Juggobundhoo Chattopadea was severely wounded; in plundering property, amount not ascertained, and in carrying off into captivity the aforesaid Juggobundhoo Chuttopadea and his son Shamachurn Chuttopadea.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge, on the 20th September, 1856.

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Case of  
NOBIN ROY.

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Case of  
NILCOMUL  
CHUCKER-  
BUTTY and  
others.

Appeal re-  
jected.

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Case of  
NILCOMUL  
CHUCKER-  
BUTTY and  
others.

*Remarks by the sessions judge.*—In concurrence with the *fatwa* of the law officer I convict the prisoners and sentence them as stated below.

This case, even for this district, is a bad one. The plaintiff a respectable Brahmin has been grievously oppressed. The attack on, and plunder of his house at night by a large body of armed men, the severe wounding of the plaintiff, and the fact of he and his son having been shamefully dishonored and forcibly carried off and kept in illegal confinement for several days are sufficiently proved by the evidence of the witnesses for the prosecution. The defendant who took the most active part in this outrage or Nilcomul Chuckerbutty has been convicted and imprisoned before in a case of affray attended with homicide, and the existence of previous enmity between him and the prosecutor has been established by an inspection of several cases called for by this court from the magistrate's office.

The witness Obhoy Chatterjee, who is a servant of Moomtaz-oodin Chowdree, the party in whose house the plaintiff and his son were illegally confined, has given evidence in this case directly contrary to the testimonies of the witnesses Nos. 24 and 25, Gourdchunder Bhattacharjee and Juggutchunder Chowdree. I fear that Obhoy Chatterjee was not independent enough to speak the whole truth.

*Sentence passed by the lower court.*—No. 1, to be imprisoned for five years with labor and irons, No. 2, to be imprisoned without irons for three years and to pay a fine of one hundred rupees on or before the 20th October, 1856, or in default of payment to labor until the fine be paid or the term of his sentence expire, and No. 3, to be imprisoned without irons for two years and to pay a fine of fifty rupees, on or before the 20th October, 1856, or in default of payment to labor until the fine be paid or the term of his sentence expire.

*Remarks by the Nizamut Adawlut.*—Present: Messrs. J. H. Patton and J. S. Torrens.) Although it is clear that a good deal of exaggeration exists in the statements of the prosecutor and his witnesses, we see no reason to doubt the truth of their evidence with respect to the minor facts of the case, so as to induce us to interfere with their conviction, and the sentence passed upon the prisoners.

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PRESENT :

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

TRIAL No. 2.  
GOVERNMENT

*versus*

HURNATH SADHEE.

TRIAL No. 3.  
GOVERNMENT AND MR. S. C. STROVER

*versus*

HURNATH SADHEE.

Mymensingh.

1857.

January 14.

Case of  
HURNATH  
SADHEE.

In a case of  
forgery and  
embezzlement  
by a post office  
clerk - appeal  
both on tech-  
nical and other  
grounds, re-  
jected.

CRIME CHARGED.—*Trial No. 2.*—1st count, forging the signatures of Mr. Cooper, the collector, Kalleechunder Suma, the treasurer, and Raminonce Sein, the treasurer's mohurrir, to documents purporting to be receipts for money remitted from the post office during the months of May to December, 1855, inclusive; 2nd count, uttering the above documents knowing the signatures attached to them to be forged; 3rd count, forging the signature of Mr. Cooper, to the Mymensingh post office cash accounts for the months of August, November and December, 1855; 4th count, uttering the above documents knowing the signatures to be forged.

*Trial No. 3.*—1st count, embezzling Co.'s Rs. 1,282-10-9, whilst in the employ of Government in the post office department, the same being money received for public purpose; 2nd count, being in the above employ and being entrusted with the preparation of certain documents, with fraudulent intention incorrectly preparing those documents; 3rd count, being employed and entrusted as above with fraudulent intention altering certain documents; 4th count, being employed and entrusted as above with fraudulent intention, destroying certain pages in the peon's book for the month of; 5th count, aiding and abetting any of the above acts; 6th count, privy to any of the above acts.

CRIME ESTABLISHED.—*Trial No. 2.*—Forgery and uttering forged documents.

*Trial No. 3.*—Embezzlement and fraudulently preparing incorrect documents.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 20th August, 1856.

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*Remarks by the sessions judge.*—*Trial No. 2.*—This case originated in a case of embezzlement (No. 3, for August,) in which the prisoner is implicated. The circumstances which led to the detection of the forgery are so well and clearly described by the magistrate Mr. C. E. Lance, that I cannot do better than incorporate them with my remarks which are as follows:—

“This is a case of forgery arising out of a charge of embezzling post office money, brought against the defendant, Hurnath Sadhee. The receipts to which the alleged forged signatures are attached required to be signed by the collector, his treasurer and the treasurer’s mohurrir in order to be valid. Those three persons have denied the signatures apparent upon the receipts, and the evidence of witnesses also goes to establish that the signatures are not genuine; moreover from July to October, 1855, the treasurer was absent on leave and therefore could not have signed the receipts for those months; in addition to this, the receipts dated May 31st and September the 30th, cannot be genuine, as the 31st May was a holiday and the 30th September was a Sunday, on both of which days the collector’s office and treasury was closed. Thus there can be no doubt that the signatures to the receipts are forgeries, indeed the defendant does not himself deny this much. He only states that he had nothing to do with the fabrication of these documents and that he did not send them to Calcutta. Now these receipts accompanied the post office accounts to Calcutta as vouchers for the sums paid into the treasury, but by inspecting the copy book of the collector’s office in which they would have been entered, had they been given, and finding no such copies it must be presumed that no receipts for those months were given by the collector. The defendant being at the time the *dāk* writer must have been the person who prepared and forwarded the accounts to Calcutta, or at any rate they could not have been transmitted without his knowledge. The accounts now filed must be the same which were received in Calcutta, as they have the general post office stamp on them. The sums said to have been remitted to the treasury according to those accounts agree with the sums noted in these receipts. Many witnesses depose that the handwriting in the body of these receipts is that of the defendant, and besides this, who would benefit by the forgery to the receipts but him. Taking all these circumstances into consideration, I think it must be presumed that Hurnath forged the signatures, or at least that he sent the receipts with his accounts to Calcutta knowing the signatures attached to them to be forgeries. Mr. Cooper also declares the signatures purporting to be his, attached to the post office cash accounts for August, November and December, 1855, to be forgeries, and witnesses well competent to judge of the genuineness of Mr. Cooper’s

signature have deposed that they do not believe those signatures to be his. If these are allowed to be forgeries, who would have forged them but the defendant; at any rate I think it must be allowed that he transmitted those accounts to Calcutta; under these circumstances the defendant is committed under the charges contained in the 4th column."

During the enquiry in a case of embezzlement, it having been brought to the notice of the collector, Mr. B. H. Cooper, that his name had been forged in several instances on receipts said to have been granted by him for post office remittances, he deposed on oath before the magistrate that the signatures attached to the post office remittances for the months of May, June, August, September, October, November and December, 1855, were not his, but that he could not confidently state whether the signature attached to the receipt for July was in his hand-writing or not. He also denied that the signatures to the post office cash accounts for the months of August and November and December were his and accordingly a charge of forgery was brought against the prisoner and he was committed for trial to this court. Before the magistrate the prisoner denied the charge. In this court he adhered to his denial and urged that as there were no eye-witnesses to the forgery having been committed by him, he cannot be subjected to punishment under the precedent of the Nizamut Adawlut, dated the 17th May, 1851, in the case of Kishengobind Singh, and of the 26th August, 1806, in the case of Chenukhlall, and the decision of this court in the case of Mohebullah, dated the 14th November, 1855; that this case has been got up against him at the instigation of his enemy Mr. Chater; that the papers were in the hands of Mr. Chater and Mr. Strover, for eight or nine months, who altered them with a view to support the charge of embezzlement brought against him, that he did not forward the paper to the General Post Office and that there were no erasures in the papers he forwarded; if there had been, they would have been detected there; that the erasures were made by his enemies, otherwise what occasion had they to detain the papers in their possession for such a length of time; that the papers are stated to have been received at the General Post Office on the 6th February, but it will be seen that he made over charge of his office on the 25th January, 1856, and proceeded to Jamalpore, to which place he was transferred, and consequently he could not have despatched them as the Calcutta dawk used to reach in five days; that in the case of embezzlement, Mr. Cooper declined to swear to the signatures in the cash account for August, November and December, being his; that he had nothing to do with the cash account for January, as he made over charge before the close of that month; that he requests examination of some documents of the post office in proof of his assertions, but that his enemies

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stated that such documents were not to be found; that the evidence of the treasurer and treasurer's mohurrir is inadmissible in this case under the precedent of the Nizamut Adawlut dated the 14th September, 1849.

The law officer convicts the prisoner of the crime charged and declares him liable to punishment by *tazeer*. I concur in this finding. It is to be remarked, that Mr. Cooper, the Collector, Kallee Chunder Banerjea, the treasurer, and Rammoonee Sein, the treasurer's mohurrir, distinctly depose that the signatures attached to the receipts for the post office remittances from May to December, 1855, inclusive, were not theirs and which is corroborated by the evidence of the witnesses Nos. 4, 5, 6, 7 and 8. The evidence of these witnesses goes further to shew that both the receipts and the cash accounts for August, November and December were drawn out in the prisoner's hand-writing and that the signature attached to the cash accounts is not in Mr. Cooper's hand-writing and which that officer has sworn to. It is also in evidence that the treasurer was absent on leave from July to October, 1855; it is therefore a matter of surprise how he could have signed these documents unless his signature had been forged and it also appears that two of the receipts are dated 31st May and 30th September, the former being a holiday and the latter a Sunday, consequently it is highly improbable that the receipts could have been obtained from the Collectorate on those dates. Although none of the witnesses depose to having actually seen the prisoner forge the said documents, still as he was in charge of the office during that period and the papers are in his hand-writing, it is fairly presumable that he forged and forwarded them to the General Post Office to prevent the embezzlement being detected. The prisoner denies that he either forged or forwarded these papers to Calcutta, but it is to be remarked that no other person could have benefited by so doing. The prisoner alludes to several precedents of the Nizamut Adawlut to shew that in the absence of any eye-witnesses he cannot be convicted of forgery, but I have to observe on this point that when the writing in the body of the receipts and accounts has been clearly identified to be his and he does not positively deny that such is the case, the precedents in question are not of the slightest avail to him, and the plea also of enmity advanced by the prisoner, unsupported as it is by any proof, is untenable; considering on these grounds that the prisoner is guilty of the crime with which he is charged, I convict him of the same. For sentence vide the following case No. 3.

*Trial No. 3.* The circumstances connected with this case are so well and clearly described by the magistrate Mr. C. E. Lance in his grounds of commitment that I cannot do better than incorporate them with my remarks. They are as follows :

"On the 28th of February Mr. Inspecting Post Master Strover charged Hurnath Sadhee, late writer in the Mymensingh post office, with the embezzlement of Co.'s Rs. 1,575-7-3, being Government money received by him. During the investigation of this charge, it appeared that the sums in certain receipts, purporting to have been signed by the Collector, which the defendant, Sadhee, was seen to have sent to the general post office in support of his accounts did not agree with the sums to the credit of the post office in the collector's accounts, it became necessary therefore to test the genuineness of these receipts. The collector on being summoned stated that the signatures to all these receipts, with the exception of that for July, were not his and as to that attached to the receipt for July, he believed it not to be his, thence arose a charge of forgery against the defendant; on this charge he has been committed to the sessions and it thus became necessary to commit the present case also. A statement of the defalcations was filed by Mr. Strover, but on comparing it with the accounts a few mistakes being discovered, Mr. Chater, the deputy post master was requested to revise the same, comparing the different accounts with each other and, in order to test the correctness of the registers, comparing those with the *challans* of letters received; this was done, and according to that supplementary statement the amount in the present charge was fixed. The embezzlement has been detected in various months from 1854 to December, 1855. It has been carried on in two ways both by crediting in the monthly abstract a sum less than was actually received, as is proved by the office register-books, and by debiting to the post office under the specification 'remitted to the treasury' a larger sum than was actually sent to the collector, as is proved by his accounts, which must be received as good evidence unless neglect or fraud in their preparation is proved by the defendant. With regard to the former mode of embezzlement the defendant denies that the accounts filed are genuine, and insinuates that Mr. Strover has tampered with them, but of this there is not even a suspicion on my part; he also states that the erasures visible in the cash account copy-book were not made by him, but in the copy of the account for April there is no erasure in the sum total or in the sum said to have been remitted to the treasury, and the defendant acknowledges that this copy is in his hand-writing, and still embezzlement is discoverable during this month: moreover, the amount now apparent after the erasures and alterations agree with the amounts in the cash accounts received from Calcutta and as those accounts bear the stamp of the general post office shewing that they are the same received therefrom, it must be concluded that they are the accounts sent to Calcutta by Hurnath and that the erasures in the office copy-book were made by the defendant, or with his

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knowledge and connivance, and also that they were made before the transmission of the monthly accounts to Calcutta. With reference to the latter mode of embezzlement the defendant allows that when he sent money to the treasury, he compared the receipts with the amount he had sent and calls a witness Noor Mohamed to prove that he did so; this, in my opinion, goes to strengthen the case against him, as he cannot allege that the amount was lessened on the road. It appears that the mode of transmitting money from the post office to the treasury was under double *challans*, one of these was returned bearing the treasurer's signature to the dawk writer, and at the end of the month an English receipt for the sum total signed by the collector, the treasurer and the treasurer's mohurrir was given, in which was detailed the dates and amounts of the *challans* received during the month as corroborative evidence of the embezzlement; in this mode it may be observed that no English receipts were given by the collector during the months from April to December 1855, inclusive, as is proved by the production of the book into which they would have been copied had they been given, and still for these months with the exception of April, the English receipts now filed purporting to have been signed by the collector were transmitted to Calcutta in support of the accounts and as further presumptive proof that they were so transmitted by the defendant Hurnath; witnesses have deposed that the writing in the body of these receipts is his and certainly comparing it with other writing which is known to be his, I am of opinion that the receipts were written by him. With reference to the cash account for the month of April, I would observe that that filed is only a copy, and that there is no voucher for the amounts remitted to the collector. There was a large amount embezzled during this April and I firmly believe that the original cash account for this month was not sent to Calcutta, although the post master on being written to about its non-receipt stated that it must have been transmitted, and forwarded a copy from the office book; this statement was made on the information afforded by Hurnath as Mr. Cooper, who made the statement, was not post master in April, when the account ought to have been sent. No copy of the collector's receipt accompanied this copy of the account, this, I think, may be accounted for by the presumption that he was afraid to attempt the forgery of any other signature than that of Mr. Cooper, and without a forgery he could not have sent a receipt, as it appears from the collector's copy book that none was given during that month. As to the missing leaves of the peon's book, I think it must be presumed that the defendant abstracted and destroyed them with the view of preventing the discovery and proof of his guilt. That the defendant Hurnath had written in the book is proved by the

inspecting post master who not only saw the writing, but officially noted during a previous visit, embezzlement to a slight amount which he had discovered in that book. Nobokoomar, the present deputy post master of Jamalpore deposes that when he received charge of the Mymensingh post office the peon book, was blank. It is true that after Hurnath gave over charge of the office, it was for two or three days in the hand of Juggut-chunder, but he deposes that he never looked at the peon book, and it cannot be believed that he, without any benefit to be derived from the act, would tear out the pages that are now missing. Therefore I am of opinion that the charge contained in the 4th count, of this calendar may fairly be considered proved against the defendant. In fine that Co.'s Rs. 1,282-10-9, have been embezzled is clearly proved by inspection of the office books and accounts received from Calcutta and filed by Mr. Strover, are the same that Hurnath transmitted, cannot be doubted; and if it is believed that he transmitted those accounts it must also be believed that he committed the embezzlement and that he incorrectly prepared those accounts with fraudulent intention and also that he altered the office copies of those accounts, therefore he was committed to the sessions under the charges detailed in column 7."

It would appear that the director general of post offices in India finding some serious irregularities in the post office of this district, directed the inspecting post master of the Dacca division, Mr. Strover, in his letter No. 1937, of the 19th February, 1855, to take prompt measures, in concert with the magistrate, to discover the person who had been guilty of suppressing letters, &c. Mr. Strover accordingly held an inquiry on the subject and found that the prisoner, who was then the post office writer, had embezzled certain sums of Government money purporting to have been paid into the collectorate, and he accordingly lodged a complaint against him to the magistrate charging him (the prisoner) with having embezzled the sum of Company's Rupees 1,575-7-8, during his incumbency. The embezzlement occurred in various months from March, 1854, to December, 1855, and was detected to have been done in two ways, first by crediting a less amount in the post office books than what was actually received, and secondly by debiting in the cash accounts under the head of remittances a greater amount than what was paid into the collector's treasury. By the former there appeared a difference of Rs. 525-11-6, as having been embezzled and by the latter a defalcation of Rs. 696-8-9, as not having been paid into the collectorate; there was a further embezzlement of Rs. 60-6-6, on account of remittances from the subordinate post office at Jamalpore, making in the aggregate the total amount of Rs. 1,282-10-9, ascertained to have been embezzled which is shewn from the statement prepared by Mr. Chater, witness No. 4, under the orders of the magistrate.

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The prisoner denied the charge throughout. In this court he urges that the charge of embezzlement is not under the precedent of the Nizamut Adawlut, in the case of Gungadhur Sircar, cognizable in the criminal court for a period exceeding six months, the charge has been got up against him by Mr. Stover the inspecting post master at the instigation of his enemy, Mr. Chater, the deputy post master; that the post office accounts passed into three or four hands and were taken by Mr. Stover to Dacca, where he ascertained the amount of embezzlement to have been Rs. 1,575-7-8, and which he swore to before the magistrate, but the magistrate finding the accounts to be incorrect, a second statement was filed by Mr. Chater, his enemy, reducing the amount to Rs. 1,282-10-9; that these accounts were not prepared in his presence and consequently are inadmissible under the precedent of the Nizamut Adawlut in the case of Mr. Charles Prazer; that after Mr. Chater had filed the statement, the magistrate made no enquiry as to its correctness or otherwise and that his (prisoner's) answer was not taken regarding it; that the difference pointed out in the register of letters despatched and the monthly statements, does not exist, as the sums of money entered in the statement and the original register correspond exactly with each other; that the existence of two registers (one in original and the other a copy) is not denied by Mr. Chater, and that the mere fact of the copy which does not bear his signature or hand-writing not tallying with the statements cannot be a ground of conviction and that mistakes might have been made in the copy by the copyist, or that his enemies might have altered them; that the difference pointed out in the monthly statements, i. e. the cash accounts and the register of postage of bearing letters received is not correct, the original register not having been produced; that the heading of the register of letters despatched has been altered for register of letters received with a view to point out a difference in the accounts which will appear on an inspection of those registers; that the monthly cash accounts, from May to December, have been found to have been forged documents, consequently he cannot be convicted of embezzlement as ascertained from those papers; that some items are entered in the statement of defalcations as remittances, &c., received by him and not correctly credited in the accounts, but they are unsupported by any document; that during a portion of the period in which embezzlement has been discovered, he was absent on leave; that the daily and monthly post office accounts kept by him were examined by the post master and signed by him, so that if there had been any difference in them, the post master would have immediately detected the same; that he made over charge to his substitute, who again gave over charge to Nubokoomar Chatterjea and that he has filed an attested copy of the

receipt given by him; that his enemies (he alludes to Mr. Strover and Mr. Chater,) have not produced the daily cash book, the peon book and the original and abstract register of daily postages received, which had they been forthcoming would have proved the correctness of his statement; lastly, that the daily register of bearing letters received for September, 1854, has not been produced, the one filed purporting to be the said register, does not bear the signature of the post master. The law officer convicts the prisoner on the 1st and 2nd counts, viz. embezzlement and fraudulently preparing incorrect documents and declares him liable to punishment by *tazeer*. I concur in this finding. From an attentive perusal of the documents and the evidence recorded on the trial, I am of opinion that the charge of embezzlement and of fraudulently preparing incorrect documents to prevent detection has been fully and clearly brought home to the prisoner. From a comparison of the post office registers with the monthly cash accounts prepared and submitted by the prisoner to the general post office, as well as of the *chellans* for the payment of money from the post office to the collectorate, it appears that the amount stated to have been embezzled by the prisoner is correct. The prisoner denies that the monthly cash accounts, &c. were those which he forwarded to the general post office and that as they passed through several hands they have been tampered with, but I have to remark that it has been fully proved on the evidence of witnesses Nos. 2, 3, 4, 5, 7 and 8 that the cash accounts and receipts are in his hand-writing and that they agree with the copies entered in the post office book, and although the prisoner states that the books were made to correspond by his enemies, still he admits that he entered the cash accounts for April 1855, where there are no erasures in the books which tallies with the one forwarded to the general post office for that month, it is therefore more than probable that the erasures in the books were made by him before the despatch of the cash accounts and as they bear the seal of the general post office and date of receipt, it is impossible that any one could have tampered with them and that these were the papers that were despatched by the prisoner to the general post office. The prisoner also does not deny that he was in charge of the office during the period that the embezzlement occurred, and no one else could have benefited by forwarding those statements to the general post office. It appears that the mode in which money was transmitted from the post office to the collectorate was by two *challans*, one of which, with the treasurer's signature attached, was returned to the dawk writer and the other retained in the collectorate, and at the close of the month an English receipt signed by the collector for the full amount paid during the month was granted, but it appears from the collectorate books

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that no such receipt were given by the collector for the months from April to December 1855, consequently those forwarded by the prisoner with the cash accounts were forgeries prepared by him to support the accounts, and his hand-writing in the body of the receipts has been clearly proved on the evidence recorded in the case. It also appears that the cash accounts for May to December, 1855, were all forwarded to the general post office at once and received there on one date, viz. the 6th February, 1856, so that doubtless the prisoner, whose duty it was to forward them, had delayed to do so until forced for fear of being detected, he having been transferred to Jamalpore. The prisoner impugns the correctness of the account and urges that Mr. Strover first swore to the sum of Rs. 1,575-7-8 having been embezzled but that the amount was afterwards ascertained to be only Rs. 1,282-10-9, and that the accounts were not made up in his presence; but I have to remark upon this point that as it appeared to the magistrate, that some mistakes had occurred in the account rendered by Mr. Strover, he tested it and found the latter sum to be the amount actually embezzled, consequently the mere fact of there having been some mistakes in the statement cannot exculpate him, the prisoner, and Mr. Chater deposes to the account having been prepared in the prisoner's presence and that he then offered no objections to the same, and both Mr. Strover and Mr. Chater have sworn to the correctness of the account prepared under the orders of the magistrate, consequently, the precedent of the Nizamut Adawlut dated the 13th February, 1850 in the case of Mr. Charles Prazer quoted by the prisoner is of no avail to him. The prisoner also urges that the charge cannot be maintained by the criminal authorities, the embezzlement having reference to a period beyond six months and he draws the court's attention to a precedent of the Nizamut Adawlut dated the 31st March, 1853 in the case of Gungadhur Sircar; but on perusing the precedent in question I observe that it relates to Act XIII. of 1850 and is not applicable to the present case, the embezzlement having occurred in the Government post office. The prisoner further states that the original accounts of the post office have not been produced, that it appears from Mr. Chater's evidence that although two books are kept they are not styled original and copy but two registers and that some of the entries in one do not correspond with the other, there being erasures in them which were made in the prisoner's time. The plea urged by the prisoner that in consequence of the accounts having been prepared from papers proved to have been forged, he cannot be convicted of embezzlement, is of no avail, as it has been proved in the preceding case that the forgeries were committed by the prisoner for the purpose of concealing the embezzlement. The plea of enmity also with Mr. Chater is, I am of opinion, groundless, as no special cause has been

assigned, except that Mr. Chater is endeavouring to deprive him of the appointment to benefit himself. Under the above circumstances, being of opinion that the prisoner is guilty of embezzlement, he being at the time in Government employ, and of preparing incorrect documents to escape detection, I convict him of the same and sentence him in two cases to be imprisoned without irons for a period of (4) four years and to pay a fine of 200 Rupees on or before the 20th September next, or in default of payment to labor until the fine be paid or the period of sentence expire ; and further to pay to Government the sum of Co.'s Rupees 1,282-10-9, the amount embezzled by him, under Act XVI. of 1850.

*Remarks by the Nizamut Adawlut.*—(Present : Messrs. J. H. Patton and J. S. Torrens.) The prisoner, from whom this appeal is preferred, stood charged before the magistrate with two distinct crimes, forgery and embezzlement, on which accordingly two separate commitments were made to the sessions. Having been convicted before the sessions judge and law officer on the first charge, sentence was postponed until after trial of the second ; on which conviction having likewise taken place, an aggregate punishment has been awarded. The appeal before us is thus against the general sentence, and it is put forward by the pleaders for the prisoner, appellant, on two distinct grounds ; first, that there is illegality in the proceedings of the sessions judge ; as the prisoner charged with the embezzlement was a post office servant, and, on conviction, it was competent to the magistrate himself to award punishment under Section 54, Act XVII. of 1854 ; secondly, that the evidence for the prosecution, considering the enmity which prisoner set forth as having induced the charges against him, is not sufficient to prove either the forgery or embezzlement. On the first point, admitting that there may be some ambiguities in the wording of the decision of the sessions judge, we can find no illegality in his proceedings, which can have the effect of vitiating them. It does not appear, that the magistrate took up the case of embezzlement simply under provisions of the post office Act referred to. But, had he done so, the circumstance of the Act giving him authority to award punishment of two years could not preclude him, when he thought that punishment was inadequate for the guilt of the prisoner, under the circumstances of the double charge against him, from committing him on both to the sessions. The charge of embezzlement against the prisoner was cognizable by the sessions judge under Regulation II. of 1813 or Act XIII. of 1850 ; and the embezzlement being once established against the prisoner, the sessions judge had power to pass the sentence he has done, as to the extent of punishment under the former Regulation, and as to realization of the money embezzled, under the special provisions of Section 1, Act XVI. of

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1857. 1850. Had the case been simply for breach of trust, the trial of which is only held under Act XIII. of 1850, there might have been some of the technical objections raised in the defence and on the appeal; but for the reasons above assigned they do not arise in this case.

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As to the objections to the decision of the sessions judge, on ground of insufficiency of the evidence for the prosecution, we have no doubt, after the fullest consideration, that they are quite untenable. The defalcation and the forgery have been clearly proved by the evidence of the collector, and by the accounts which the prisoner himself prepared and forwarded; and his defence could only be at all maintained by making good the assertion that these had been altered and tampered with, by those whom he accuses of having been actuated by enmity against him, of which there is not the slightest proof. Under these circumstances, we confirm the orders of the sessions judge.

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PRESENT:

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge*.

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GOVERNMENT AND AKBUR ALEE

*versus*

HASSUN ALEE.

Chittagong.

1857.

January 14.

Case of  
HASSUN  
ALEE.

CRIME CHARGED.—1st count, having on the night of the 26th August, 1856 or 12th Bhadro, 1263, B. S., burglariously entered the house of prosecutor and stolen therefrom property valued at 1 R. 11 as.; 2nd count, having retained in his possession part of the property acquired by burglary, well knowing it to have been so acquired.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

In concurrence with sessions judge, against the law officer's *julwa* prisoner accused of burglary, &c. acquitted.

Tried before Mr. G. C. Fletcher, officiating additional sessions judge of Chittagong, on the 30th October, 1856.

*Remarks by the officiating additional sessions judge*.—The prosecutor, Akbur Alee, states that on the morning of Wednesday,\* the 12th Bhadon, he

\* Wednesday was the 13th.

found that his house had been

broken into, and a pot of *gurjun* oil, three *arces* of pepper pods, one *aree* of rice, a *chudder*, a mat, and a *jhoongaer* (sort of umbrella) worth altogether one rupee and eleven annas had been stolen, and that on the same day as he was returning from market he seized the prisoner, Hassun Alee, whom he already suspected of the burglary, with a cloth fastened round his

waist, and carrying on his head a basket of pepper, which he recognized to be the chudder and pepper stolen during the night. The seizure, he declares, was made at a distance of one ghurry's journey from his (prosecutor's) village. The prosecutor says that when he seized the prisoner, there were present three persons, viz. Bocha Gazee (witness No. 1,) Kasim Alec (witness No. 2,) and Moontaz Bebee (witness No. 3.) These three persons did not, prosecutor says, accompany him to or from the market. After the seizure, prosecutor says he singly took the prisoner to the village chowkeedar, and left him in charge of that officer.

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The first of the witnesses above named\* deposes that he was returning from market in company with Moontaz Bebee (wit-

\* Wit. No. 1, Bocha Gazee. ness No. 3,) when he saw prosecutor seize the prisoner with a cloth and some pepper, and heard him say that his house had been robbed. He says that the cloth was taken from the prisoner by the prosecutor and carried by the latter to the chowkeedar. The pepper basket, witness says, was found in the prisoner's hand, and was left with him during the walk towards the chowkeedar's house. Witness says he did not accompany the prosecutor to market, but on the way home overtook him as he seized the prisoner. Witness says at the time when prisoner was seized by the prosecutor, there were present besides himself and Moontaz Bebee, many people unknown to witness, that he knows witness No. 2, Kasim Alec, but did not see him after market the day prisoner was seized.

The woman† stated by the last witness to have been in his

† Wit. No. 3, Moontaz Bebee. company, when prisoner was seized by prosecutor, deposes that she returned from market in company with that witness, prosecutor and Kasim Alec (witness No. 2,) the two latter leading the way, while witness and Bocha Gazee followed them. On the road, she saw the prosecutor take a cloth from the prisoner, asking him where he got it. The seizure, she says, took place in the presence of herself, Bocha Gazee (witness No. 1,) and Kasim Alec (witness No. 2,) and no other persons. Witness says that a basket of pepper claimed by the prosecutor was also found in the prisoner's hand and was carried by him after his seizure, and that the cloth first taken and looked at by prosecutor was thrown into the basket.

The third of prosecutor's witnesses‡ deposes that the prosecutor's house was robbed on Tuesday night, eleven days from the end of Bhadon; that on Wednesday morning the prosecutor

‡ Wit. No. 2, Kasim Alec. called witness and told him that the articles enumerated above

had been stolen; that on the same day after market he set out to return home in company with the prosecutor and the witnesses



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*Bocha Gazee and Moonfaz Bebee*; that on the road the prosecutor seized the prisoner and asked him where he had got his (prosecutor's) cloth, and that witness *afterwards accompanied prosecutor with the prisoner to the chowkeedar's house*. The cloth, this witness deposes, *remained with the prisoner after his seizure*.

Next, we have the evidence of the prosecutor's mother,\* who

\* Wit. No. 4, Sreemotee Roishona. deposes that she saw the breach in the prosecutor's house on Wednesday morning, and immediately went to the house of Hussun Ali, chowkeedar, but directed him not to give information of the occurrence at the thannah till she had made search at the house of the prisoner, whom, as being a notorious bad character, she suspected of having committed the burglary. Next, she says she went *in company* with Roostum Alee to the prosecutor's house, and there saw on a *choola* (fire-place) a pot of *gurjun* oil, hanging to the mat wall, a basket, and, against the wall on the ground, a *jhoongaer*. She shewed these articles to Roostum Alee, in whose presence, the prisoner's wife (then and there) set fire to and burnt the *jhoongaer*. Witness then went a second time, she declares, to the chowkeedar's house, but not finding him there, returned home.

Witness saw her son returning the same evening from market with the prisoner, round *whose waist was the cloth*, which her son had found on him.

The witness,† said to have accompanied prosecutor's mother

† Witness No. 5, Roostum Alee. in her visit to the prisoner's house, deposes that she called him from the house of a neighbour called Asmut Alee, that she went to the prosecutor's house *and afterwards called witness in*, whereupon he entered the yard and prosecutor's mother said to him: "Last night my house was robbed, this *gurjun* (pointing to a pot) is mine and so is this *jhoongaer*, and this empty basket is mine," upon this prosecutor's mother left the prisoner's house at witness's suggestion to call an elder (Mathur) of prisoner's village. Witness, *after some time had been spent in looking for an elder and for the chowkeedar*, went home to his house, distant only a short distance from prisoner's, and was sitting under a tree, when he saw smoke near the prisoner's house, which he supposed at first to have been caused by prisoner's house having been fired with intent to charge him (witness) with arson. Going again to the prisoner's house, he saw the *jhoongaer* pointed out by prosecutor's mother half burnt, *but no one else* was present at the burning, save certain wood-cutters and a man, named Dewan Alee.

The chowkeedar‡ of the prosecutor's village deposes that in

‡ Witness No. 6, Hassun Alee. the evening of Wednesday, 11th or 12th Bhadon, the prosecutor and Kasim Alee, brought the prisoner to witness's house.

The three witnesses\* first above named identify the cloth produced in court as that found

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- \* Witness No. 1, Bocha Gazec,  
 " " 2, Kasim Allee,  
 " " 3, Moontaz Bebec.

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on the prisoner, and recognize it to be the property of the prosecutor.

The prisoner pleads *not guilty*, alleges enmity to himself on the part of the witness, Roostum Alee, declares that the pepper pods were put into the basket by the prosecutor's mother, and that when the prosecutor seized him, he had not in his possession the cloth produced in court.

Of the two witnesses examined for the defence, one† deposes

- † Witness No. 7, Haddeebur.  
 that when the prisoner was seized by the prosecutor, the former had not in his possession, as far as witness saw, any cloth belonging to the prosecutor, and that the prosecutor said nothing of finding such cloth, although he did converse with witness as to the seizure of the prisoner.

The law officer convicts the prisoner of knowingly retaining possession of property acquired by theft, and declares him liable to *tazeer*.

Being unable to concur in this opinion, because I find the evidence not trustworthy, and therefore insufficient to establish either count of the indictment, I would acquit the prisoner. My disbelief of the criminatory evidence is based upon the many gross inconsistencies, discrepancies and contradiction, apparent upon comparison of the prosecutor's deposition with those of the witnesses, and the latter one with another. The magistrate has been instructed, in default of bail, to keep the prisoner in close custody till the order of the Court, on this reference, be communicated to him.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens.) The judge has gone very carefully into evidence given in this case. We agree with him that the depositions of the prosecutor and his witnesses, respecting the finding of the property on the prisoner, on the road to the *hât*, are altogether untrustworthy, and evince every appearance of a conspiracy formed to bring home the crime to the accused, against whom suspicion was, in the first instance, directed, as it would seem, merely owing to his previous convictions, and the character which he in consequence bore. We observe also that the magistrate had considerable doubt as to the degree of credit that should be placed on the evidence brought for the prosecution. He remarks in his abstract grounds of commitment, that he is disposed to consider the case a true one; but we think, had he more thoroughly sifted and considered the evidence, he would have come to the same conclusions, as the sessions judge has done, after trial. We acquit the prisoner and direct his release.

## PRESENT :

J. H. PATTON, Esq., *Judge*. AND J. S. TORRENS, Esq.,  
*Officiating Judge*.

GOVERNMENT AND MUSST. BOODNEE WIFE OF  
GOENDA OOROAN

Chota Nag-  
pore.

*versus*

CHOGRO.

1857.

January 15.

Case of  
CHOGRO.

Prisoner con-  
fessed of wil-  
l murder un-  
der the cir-  
cumstances  
unreported.

CRIME CHARGED.—Wilful murder of Soorye Ooroan, son of  
prosecutrix.

Committing Officer.—Captain J. S. Davies, senior assistant  
commissioner of Lohardugga.

Tried before Captain W. H. Oakes, deputy commissioner of  
Chota Nagpore, on the 11th November, 1856.

*Remarks by the deputy commissioner.*—During the day of the  
13th September, 1856, a child named Dhemnee, witness No. 1,  
between six and eight years of age raised a cry just outside of  
the village of Ghattatoli, that her brother Soorye had been  
killed by the prisoner Chogro; prosecutrix ran to the spot and  
found her son Soorye unable to speak a word, and at the point  
of death, his head having been fractured by a blow from a large  
stone, weighing seven and half seers. The stone was on the  
head of the deceased, who died almost instantly. The prisoner  
attempted to abscond but was arrested by the villagers, wit-  
nesses No. 2, Kunnee, No. 3, Kanday and No. 4, Kuttha.

Prisoner has confessed throughout. He alleges that having  
had occasion to go outside the village, he found the deceased  
committing adultery with Musst. Nagee, aged about forty-five  
years (witness No. 11,) wife of his late master Kuttha, witness  
No. 4. The prisoner became angry at what he saw, and taking  
up the large stone, which was lying at hand, he dashed it on  
the head of the deceased and killed him. Prisoner then pursued  
the woman, but she escaped into the village.

It is to be remarked, that in his mofussil confession, the pri-  
soner states, that he had killed the deceased, because he had  
gone out with the woman to fetch water. The thannah con-  
fession is not inconsistent with the after-statements of the pri-  
soner, as explained by him. He asserts that the parties had  
gone out to draw water and that he afterwards discovered them  
in the act of criminal intercourse, and then inflicted the fatal  
blow. The apparent discrepancy arises, I think, from the  
mofussil confession being too succinct.

There is no eye-witness to the fact, except the child Dhem-  
nee witness No. 1, who is apparently between six and eight  
years of age. She states that the deceased had fallen asleep on

the ground, and that the prisoner came up and taking the stone from off the ground, threw it down on the head of the sleeper and killed him. On this the child cried out, and witnesses No. 2, Kunnee, No. 3, Kanday and No. 4, Kuttha, as stated in evidence by them, ran out of the village and arrested the prisoner within a short distance of the body.

Kuttha, witness No. 4, husband of Musst. Nagee arrested the prisoner on the alarm being given. This witness after much hesitation, and with evident reluctance, admitted that his wife had gone out to draw water, and that when he was running out on the out-cry being raised, he had met his wife coming home, and that the spot where he had met her was between his own house and the place where the corpse was lying.

Witnesses No. 2, Kunnee, No. 3, Kanday and No. 4, Kuttha prove that the deceased died from having his head fractured by a blow from a stone.

Witnesses Nos. 2, 3 and 4, and Bundhoo No. 5, Ghoomba No. 6, Bholee No. 7, and Sheikh Jeeun No. 8, prove that the confessions before the police and the principal assistant's court were voluntarily made.

Musst. Nagee, witness No. 11, altogether denies having had any improper intercourse with the prisoner.

The jury\* find the prisoner guilty of wilful murder. In this finding I concur. In awarding punishment, however, it is necessary to determine whether the statement of the prisoner,

\* Ramkanhie Roy, Mooktiar.  
Ukhoury Luchminarain, Mooktiar.

that the deceased was killed in the act of adultery with his late master's wife, is entitled to credit. The case I find a difficult one, but on mature consideration, I consider the prisoner's account of the matter is true. I may observe also that the prisoner's manner in making his confession, had every appearance of truth about it. The age of the child Dhemnee is uncertain, being apparently between six and eight years. It is impossible to tell whether she is full seven years old, and if she have not attained that age, I presume her evidence would not be admissible under Section 14, of Act II. of 1855. She is also not a child of much intelligence, as will be perceived from her not knowing whether it is better to speak the truth than to state what is false. The account given by her of what occurred, seems to me not credible. That the prisoner should, as narrated by this witness, accidentally come to the spot, where the deceased was sleeping, and take up a stone, and dash it on his head and kill him, without the shadow of a reason, and that he should do this in broad day-light, and in the immediate vicinity of the village, in which the deceased and his friends live, I cannot believe. The prisoner's statement, is to my mind, corroborated, in a very satisfactory manner, by the deposition of Kuttha witness No.

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4, who, with reluctance, stated, that his wife had gone out to draw water, and that on the out-cry being made, he met his wife returning home, between his own house, and the spot where the deceased had been killed.

Though I find the prisoner guilty of the charge of wilful murder, I think that the prisoner's guilt is attended with extenuating circumstances, as he killed the deceased in the act of criminal intercourse with his late master's wife, and I therefore recommend that he be imprisoned for fourteen years with hard labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens). The plea put forward by the prisoner, even if it was clear that there were grounds for it, would be no justification of the act to which the prisoner has so distinctly confessed. The circumstances of the case, however, are extraordinary and the act of the prisoner in his attack on the deceased appear quite unaccounted for. It is manifest, however, as far as the record shews, that there was no premeditation on the part of the prisoner to take the life of the deceased; but the sentence recommended by the deputy commissioner being, in our opinion, inadequate, we sentence him to imprisonment for life in transportation beyond sea.

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PRESENT :

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

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GOVERNMENT AND KEWAL MUHTON

*versus*

MUNSHA.

Bhaugulpore.

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CRIME CHARGED.—1st count, burglary and theft of property valued at 2 annas; 2nd count, burglary with attempt at theft.

CRIME ESTABLISHED.—Burglary and theft of property valued at annas 2.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Appeal re-  
jected. Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 17th October, 1856.

*Remarks by the officiating sessions judge.*—This case was tried at Monghyr with the aid of a jury on the 17th October, 1856.

Sobunslal.

Alif Khan.

Deonarain Singli.

The prisoner pleaded *not guilty*.

In the month of Sawun, the prosecutor heard a noise at about midnight, while he was sleeping in the

southern compartment of his house; he went out, and found that Manoollah and Tejoo chowkeedars (witnesses Nos. 1 and 2) had apprehended the prisoner in the act of committing burglary in his house, he had made a large hole in the wall, as also the granary, in which there happened to be only a few articles, valued 2 annas (two sickles and an axe) these he had on his person when arrested, also a *sind katee*, with which he effected an entrance into the dwelling. On the chowkeedars giving the alarm, witnesses Nos. 3, 4, 5 and 6, came to the spot, and found the thief in their custody with the property, which they identify, and declare to belong to prosecutor.

The prisoner in his defence alleges, that his grandson died, and another was in a precarious state of health, he was going to his brother's house when the chowkeedars apprehended and accused him of the burglary and theft, and while in this state, witnesses Nos. 3, 4, 5 and 6, came to their assistance. The *sind katee* was in witness No. 1's hand, and the prosecutor placed the property near him, and in the morning he was taken to the police station. For four years he was incarcerated in the Hazareebagh jail for the same crime in 1839, as proved by the certificate furnished by the magistrate of that district. He cited no witnesses to depose in his behalf. The jury returned a verdict of guilty, in which I concurred, and, being an old offender, I sentenced him accordingly.

*Sentence passed by the lower court.*—Seven years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens.) The prisoner has urged nothing in his petition of appeal beyond enmity with the chowkeedar, who arrested him, without impugning the statement of the prosecutor and his witnesses. It appears from their evidence that he was taken in the act, and property, belonging to the prosecutor, found on his person. We see no reason to interfere with the conviction and sentence.

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## PRESENT :

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

## GOVERNMENT

*versus*

Rungpore. **SEEBOO MANJHEE (No. 32,) LUKHEE MANJHEE  
(No. 33,) AND JOKEE NUSHA (No. 34.)**

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Case of  
SEEBOO  
MANJHEE  
and others.

**CRIME CHARGED.**—Committing dacoity in the *golas* of Bissonath Shah, Rajchunder Shah, Gour Beharee Dutt, Ramnarain Shah, Gogon Moodee, Dhon Mahomed and Peer Mahomed Sircar in Kendool Elahcegunge and plundering therefrom property valued at Rs. 361-10 ; 2nd count, with knowingly taking and being in possession of property plundered in the above dacoity.

Appeal re-  
jected.

**CRIME ESTABLISHED.**—Dacoity and knowingly taking and being in possession of property plundered in the above dacoity.

Committing Officer.—Mr. J. C. Dodgson, joint-magistrate of Bograh.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 13th September, 1856.

*Remarks by the sessions judge.*—On the night of the 12th January, 1856, the village of Kendool was attacked by a band of dacoits, who entered and plundered the *golas* there situated, of Bissonath Shah, witness No. 1, Rajchunder Shah, witness No. 2, Dhon Mahomed, Peer Mahomed Shah, Ramnarain Dass Shah, witness No. 4 and the shop of Gogon Moodee, witness No. 5 carrying off in all property valued at Co.'s Rs. 360-10.

In the *gola* of Rajchunder Shah, witness No. 2, Gourbeharee Dutt, witness No. 3 was staying, he also lost some property ; when the dacoits went off, it was proposed that they should be tracked, and Kishore Singh, witness No. 10 undertook to do this alone, as he could get no one to accompany him. He started accordingly and allowing them to proceed ahead, going himself cautiously, stopping when they stopped, and following when they went on, he dogged them till day-break, when finding himself near the village of Sukahar about 4 or 5 *koss* to the east, he slipped into the village, leaving the dacoits to proceed on their way across the plain, and rousing the villagers succeeded with their aid in apprehending the three prisoners Seeboo Manjhee, Lukee Manjhee, and Jokee Nusho, each with a bundle on his head. The rest of the party in advance got off into some heavy tree jungle to the east. The prisoners were taken back to Kendool, and on the way pointed out under a tree some emp-

ty boxes which they had left there, where they halted the previous night. Information having been sent to the thannah early in the morning, the darogah came that same afternoon, the bundles were opened, and found to contain 35 articles of property which were identified by the parties whose houses had been robbed as their property; and 13 pieces of property not capable of identification, being scraps of cloths, plain paper and such like articles.

The prisoners confessed to the darogah and were sent in; before the joint-magistrate they repudiated their mofussil confessions, and asserted that they had been proceeding along the road on their own proper business, when they were seized by the Sukahar villagers without any reason, and charged with this dacoity. No reason was then assigned for a false charge having been brought against them.

In this court Lukhee pleads a former quarrel with Kishore Singh, regarding a fee due for crossing at the ferry, but supports it by no evidence. He did not even assert any previous acquaintance with him before the joint-magistrate, and his house is stated to be about 13 or 14 *koss* from Kendool where Kishore Singh resides. Besides this, he calls two witnesses to prove that he was at home on the night of the dacoity, but these are now called for the first time and were only named as witnesses to character; besides these he brought three witnesses, who saw him on Saturday afternoon at market and came home with him. The other defendants assign Kishore's enmity with Lukhee, as the cause of this charge having been brought against them, and similarly state that they were seized without cause.

I see no reason whatever to doubt the evidence for the prosecution; as far as I can judge from the way in which the witnesses gave their evidence, it may be relied on. After an interval of nine months, if in some instances some discrepancies are observable, this is not to be wondered at; there are none, which in my opinion, affect materially the value of the evidence.

The prisoners do not deny they were apprehended on the morning of Sunday in or near the village of Sakahar, distant 9 or 10 *koss* from their own homes. In the absence of any proof of previous enmity against them, on the part of any of the witnesses, it is difficult to suppose any object that could have induced so many uninterested persons to combine together for their ruin. Even if one of them had a quarrel with Kishore, there would still remain this difficulty, for Kishore does not appear to stand in any such relation to the (virtual) prosecutors that to avenge him upon a person with whom he had a quarrel, they should willingly incur not only the trouble and annoyance which a prosecution could not fail to entail upon them, but the guilt and danger of perjury.

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 and others.

Owing to the nature of the property consisting of new pieces of cloth of different kinds, the witnesses sent in to prove what property had been found upon the prisoners, were unable clearly to identify it. It is not to be supposed, that they would be able so to do. I therefore called for the darogah by whom the list of the property was prepared and sent in. Being absent on leave, there has been some delay in procuring his attendance. He has to-day given evidence, and the link wanting in the chain of evidence is now complete.

I observe that the silver ornament marked 46, has been erroneously entered in the calendar, as found upon Seeboo. From the *chelan* itself and the evidence of the darogah it is clear that it was found upon Lukhee.

The evidence leaves no doubt on my mind of the guilt of the prisoners, and the circumstances under which they were seized, afford a sufficient legal presumption for a conviction on the 1st count.

On the 2nd count there can be no doubt.

I therefore convict them of dacoity, and on the 2nd count of knowingly receiving and having in their possession property acquired by dacoity, and sentence them to imprisonment in banishment with hard labor in irons for 8 years, and to pay a fine under Act XVI. of 1850 of Co.'s Rs. 329-6-6 the difference between the value of the property plundered and that recovered, for which they are to be held jointly and severally responsible, and which on realization is to be appropriated to the reimbursement of the parties robbed, in proportion to the amount of their respective losses. I tried the case alone under Act XXIV. of 1843.

The property will be made over to the owners to whom it has been proved to belong.

The conduct of Kishore Singh appears to me to have been very praise-worthy, it is an example which might be followed with advantage in many cases, if but one or two in a village had but courage to track the dacoits to their houses, or till they can get assistance to secure them. The joint-magistrate will be directed to give him a reward of Co.'s Rs. 30.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens.) The prisoners were secretly followed; and on their arrival at a certain village, where they had stopped with the stolen property, were arrested in the presence of the villagers, who were summoned. Considering the evidence on this point, connected with their confessions before the police, we consider the proof against the prisoners as complete and reject their appeal.

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PRESENT :

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

GOVERNMENT AND MUSST. TEELUCK BEWA

*versus*

RAMGOPAL SHAWOO.

Moorsheda-  
bad.

1857.

CRIME CHARGED.—Dacoity in the house of the prosecutrix, in which dacoity property to the value of Rupees 53-2-0, was plundered.

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CRIME ESTABLISHED.—Dacoity in the prosecutrix's house in which robbery of property valued at Rupees 53-2-0, was effected.

Case of  
RAMGOPAL  
SHAWOO.

Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedadabad.

Appeal re-  
jected.

Tried before Mr. A. Pigon, officiating sessions judge of Moorshedadabad, on the 23rd October, 1856.

*Remarks by the officiating sessions judge.*—On the night of the 8th August, the house of the prosecutrix was entered by a gang of six or seven men and she was robbed of property valued at Rs. 53-2. She heard a knocking at her door, and on not opening it, the mud wall on the side of the door was excavated from without and the door was thus opened, she was knocked down and the robbers dug the floor of her house, and finding 50 Rs. in cash and a few small articles, decamped with this property. The police burkundaz of the village *phaurree* hearing that the prisoner had a fresh wound on his hand, apprehended him, and on the darogah arriving, he confessed that he and some others had gone to the prosecutrix's house that night with the intention of robbing her, and had carried off all the property they could find; this confession he repeated before the deputy magistrate, and said the slight wound was caused by the iron instrument, used in excavating the hole in the wall, slipping off on to his hand.

The confessions are fully proved and shewn to have been voluntarily made, and the guilt of the prisoner is therefore clear.

The prosecutrix stated that the robbers lit a *mussal* and were armed with clubs, and that she struck at the door as they were making the hole and felt that she had struck some body with the "*kedooda*" she used, and that she had recognised the prisoner, and also that the *mussal* had been made by the pulling out of some of the straw of her thatch.

A curious circumstance connected with this case is the fact of none of her neighbours being able to testify to seeing the dacoits; but this is explained by the cautious method employed by the robbers in making, as deposed to by the prosecutrix, no

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great noise; and on not obtaining an entrance by knocking at the door, by their making a hole in the wall, instead of breaking the door open, and as she herself was prevented from making any outcry (and indeed being an old and infirm woman, she would have been unable to make much noise) the robbers might easily have committed the robbery in silence; her testimony has been consistent on the fact of the robbery throughout, and was given before me in a clear distinct manner, so as to induce me to give credence to it, supported as it is by the state of the house as certified to by the witnesses to the *sooruthal* and though this alone might be insufficient for a conviction, yet corroborated as it is by the confessions of the prisoner, is of great weight.

There is a slight discrepancy in the evidence as to the time at which the *mofussil* confession was made, but the discrepancy is so slight, as in fact to cause me to place greater reliance on the testimony.

It is not proved that a torch was lit, as it was not mentioned in the first information, and except by the police the other witnesses to the *sooruthal* do not certify to the thatch presenting any appearance of having been pulled about for the purpose of making a *mussal*, as stated by the prosecutrix. The alleged recognition of the prisoner by the prosecutrix is not substantiated, nor the fact of her having struck any of the robbers, as neither circumstance was mentioned in the first information, but the fact of a gang of robbers having entered her house at night, armed with clubs and having forcibly robbed her of her property is proved, and as such offence comes within the definition of dacoity, as laid down in Clause 1, Section 3, of Regulation L. of 1803, and as the prisoner has confessed to having been one of that gang and that he went there with the intention of committing robbery, I convict him (Ramgopal Shawoo,) of having committed dacoity in the prosecutrix's house, in which robbery of property valued at Rs. 53-2 was effected, and sentence him to imprisonment with labor in irons for seven years, and to a fine of Rs. 53-2 to be realized and paid to the prosecutrix.

The prisoner pleaded *not guilty* before me, and stated that he was beaten and thus made to confess, but he was unable to prove this defence.

The case was tried under Act XXIV. of 1843.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens.) The prisoner alleges in his petition of appeal that he was detained four days in custody before his confession was recorded; but we find from the record that it was taken on the day he was arrested. The confessions, as made before the police and before the magistrate, are duly attested, and we see no reason to interfere with the conviction and sentence.

PRESENT :

J. H. PATTON, Esq., *Judge*, AND J. S. TORRENS, Esq.,  
*Officiating Judge.*

GOVERNMENT AND MAHOMOOD RAJAH

*versus*

MAHOMOOD ABBAS (No. 1.) AND OODA  
GAZIE (No. 2.)

Tipperah.

1857.

CRIME CHARGED.—1st count, forcibly seizing Mahomood Danish, the cousin of the prosecutor, slitting his ear and knocking out three teeth with intent to disfigure him ; 2nd count, severely assaulting and wounding the same.

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Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Case of  
MAHOMOOD  
ABBAS and  
another.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 10th November, 1856.

Conviction

*Remarks by the sessions judge.*—The prisoners are charged with slitting the ear and knocking out three of the teeth of the witness Mahomood Danish, No. 1, who has been transferred by the committing officer from his proper capacity of prosecutor to that of a witness, his cousin being made prosecutor in his place.

of assault  
and wounding  
with intent to  
disfigure.

The prisoner, Mahomood Abbas, pleaded on the first count *not guilty* of cutting the ear or knocking out the teeth of Mahomood Danish, but guilty of “putting a mark on him to recognize him hereafter.” On the second, he pleaded *not guilty* of severely assaulting, but guilty of wounding the said Mahomood Danish.

The prisoner, Ooda Gazie, pleaded guilty of cutting the ear of Mahomood Danish, but *not guilty* of knocking out three of his teeth. And on the second count, guilty of wounding, but *not guilty* of severely assaulting the said Mahomood Danish.

The principal witness was the wounded man, Mahomood Danish, who deposed that the prisoners with the assistance of some companions, two of whom only he was sufficiently collected to recognize, seized him on the night of the 5th September, gagged and bound him, and taking him in this state to the compound of the prisoner, Mahomood Abbas, threw him on the ground. They then knocked out three of his teeth, placed a log of wood across his chest, and while the prisoner, Ooda Gazie, held his right ear, the prisoner, Mahomood Abbas slit it with a *dao*. The prisoner, Mahomood Abbas, then struck him with the point of the *dao* under the left eye with the purpose, as the witness thinks, of forcing the eye from the socket. The prisoner Ooda Gazie's mother interfered and saved

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the witness from further violence, which was threatened to the extent of cutting his throat. The prisoners then, after robbing him of 10 rupees, took him to his house and left him there. The causes of this extreme violence were the witness's dismissal of the prisoner, Mahomood Abbas, who was formerly his *gomashita*, from his service, and some previous demand for rent which was enforced in a manner unpalatable to the prisoner.

The attempt to dig out the eye, the threat of cutting the throat, and the asserted theft of ten rupees are probably exaggerations on the part of the witness, but his appearance and the evidence of Dr. Williams, in the magistrate's court render it beyond a question that he was seriously ill-treated. The ear has reunited to the head and the hearing seems again perfect, but the member has the appearance of having been severed about half way up its junction with the head. Three of the front teeth are also missing.

The following was the effect of Dr. Williams' deposition in the magistrate's court, for he is absent on leave, and I am thus prevented from taking his deposition anew.

The right ear was severed through the lower part. There was much contusion of the upper lip, and left eye produced apparently by a severe blow:—the throat bore marks of having been severely constricted, and a small portion of skin was apparently torn off the back, while other portions of his body seemed to have received several bruises. There was a prospect (which has since been realized) of the ear uniting again to the head.

The nazir of the magistrate's court was specially deputed to enquire into the case. He went to the spot and reported that Mahomood Danish had been detected in the act of entering the house of the prisoner, Mahomood Abbas, at midnight with improper intentions towards the wife of the latter, with whom he had previously been talking lightly and jocosely. The nazir considered the prisoners had doubtless severely beaten and slit the ear of Mahomood Danish, but he was disposed to attribute the wound under the eye and the injury apparent on the month to his having fallen over the lever, on which the "*dhekkee*" used to pound rice works.

The witness Hossein Gazie, No. 2, was absent in consequence of severe illness. The magistrate has attended to Section 4, Regulation IX. of 1796.

Witness No. 3, Mahomood Ally, saw, as he was returning home at night, the prisoners assault Mahomood Danish; his attention being attracted to the occurrence by the noise it occasioned. He was driven from the spot by the prisoner, Mahomood Abbas, and proceeded on his road home, where he subsequently saw Mahomood Danish wounded and bruised.

His evidence was much fuller in the court of the committing officer than in mine, but when questioned as to the omissions apparent in the latter instance, he repeated that a log of wood was placed by the prisoners across the breast of Mahomood Danish, and that the ill-treatment he underwent was accompanied by threats of still more serious violence.

The evidence of these witnesses was circumstantial, the most important being that of the wife

- No. 16, Summeerooddeen *alias*  
Synooddeen.  
„ 19, Sikdar Gazie.  
„ 4, Azim Chowdree.  
„ 22, Musst. Shuffer Jan.  
„ 23, Deloo Meah.

of the prisoner, Mahomood Abbas, who deposed that Mahomood Danish had held some conversation with her in the course of the day, the main object of which was to ascertain

the probability of her husband being absent that night, and whether the door of the room in which they slept was usually fastened. She proceeded to state that she was awakened at midnight by some one touching her face and the upper part of her person, whom she found to be Mahomood Danish, and who instead of listening to her remonstrances made an improper proposal to her. She then awoke her husband, who rose up and dragged Mahomood Danish out of the room. The witness, Deloo Meah, No. 3, stated that the wife of Mahomood Abbas had complained to him that Mahomood Danish was in the habit of talking lightly with her, and that he had remonstrated with him on the impropriety of his conduct.

Mahomood Danish seems to hold the position of “Vakeel Bap” to the wife of the prisoner, Mahomood Abbas, a connection somewhat resembling that of the person who in our church gives away the bride, but which in native opinion would add greatly to the criminality of any improper connection between them.

The prisoners made full confessions both in the mofussil and before the magistrate of having slit the witness's ear in consequence of detecting him at midnight in the place and manner already described, such also was their defence in my court.

Adverting to the fact of the witness, Musst. Suffer Jan, No. 22, being the wife of one of the two prisoners, and to the Sudder Court's ruling that the summoning a wife to give evidence against her husband has always been regarded as objectionable and should not be encouraged, I should have abstained from examining her, had it not been that her evidence is calculated to support rather than injure the line of defence adopted by her husband, which is, that the ear of Mahomood Danish, was slit in consequence of his having attempted to take improper liberties with his, the prisoner's wife, and not because the former had dismissed the prisoner from his office of gomastah.

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The Mahomedan law officer finds that the prisoners slit the ear of the witness, Mahomood Danish, but is of opinion that they were justified, under the circumstances of the case in so acting.

In this finding, I cannot concur for the following reasons.

Divested of a certain amount of exaggeration apparent in the evidence of Mahomood Danish and Mahomood Ally, the case appears to stand thus. Mahomood Danish, having ascertained in the course of the forenoon that the prisoner Mahomood Abbas, was likely to be absent watching his crops, went to the house at midnight and entered the room in which the husband and wife were sleeping, expecting to find the former absent. His detection followed, and the prisoner, Mahomood Abbas, who is a muscular man, dragged him from the room into the adjoining compound. I agree with the nazir that the loss of teeth and bruises on the face were attributable to a fall and not to a blow, but this fall was part of the violence used towards him in throwing him on the ground and thus bringing his face in contact with two heavy pieces of wood firmly fixed in the ground. There is no mark on the cheek to support the supposition of a wound having been inflicted with the object of digging out the eye, but the ear was nearly severed from the head, the neck seriously compressed, and Mahomood Danish looks even now like a man who has been most severely beaten.

Now, I cannot see in the impropriety and folly of *his* conduct any justification of such cruel treatment. He was not caught in the act of adultery, but on the contrary had been forcibly removed from the possibility of doing the prisoners any harm and was then thrown on the ground and mutilated and beaten in a very cold-blooded and cruel manner. Redress might have been obtained had the prisoners sought it the following day in the proper quarter, instead of revenging themselves as they did on the spot, and I think that the acquittal and release of the prisoner will lead to a dangerous belief that individuals have a right to mete out punishment themselves to those who have wronged, or, as in the present instance, merely sought to wrong them.

I have never myself tried a case of this kind, nor can I find a precedent to assist me in suggesting the degree of punishment to which I conceive the prisoners have rendered themselves liable. But I am of opinion that they merit at least three years' imprisonment with a proportionate fine in lieu of labor.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton and J. S. Torrens.) We agree in the reasoning and conclusions of the sessions judge as contained in paragraph 18th of his report of the trial; and though, no doubt, the prisoner Mahomood Abbas had provocation, it cannot justify the deliberate and wilful act of cruelty, which he perpetrated with the

assistance of the other prisoner. We sentence them both as recommended by the sessions judge, with a fine of 50 Rupees each to be paid in lieu of labor within one week, from date of receipt of this order.

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Case of  
MAHMOOD  
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another.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

MUSSAMUT JARREE.

Cuttack.

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Case of  
MUSSAMUT  
JARREE.

CRIME CHARGED.—Exposing and abandoning her infant son, in a jungle, immediately after he was born, with the intent to cause its death on the 8th June, 1856.

Committing Officer.—Mr. R. N. Shore, magistrate of Cuttack. Tried before Mr. J. Ward, sessions judge of Cuttack, on the 26th July, 1856.

*Remarks by the sessions judge.*—The particulars of this case are as follows.

On the 8th July, two witnesses saw prisoner giving birth to the child, which was found on that spot, a small jungle near the road, an hour afterwards, having been abandoned by its mother. She is proved to have no friends or relations for some time and to have been deaf and dumb from her birth. No one can understand her strange cry, and of course she has given no defence. In the jail she did not notice or try to nourish her child, which is in charge of a nurse. She was in a most miserable state when apprehended.

The law officer declares her subject to punishment by *tazeer*, but I consider her to be an idiot and excused by law from punishment. I therefore forward the papers of the case to the sudder court, to be laid before the Government of Bengal, with my recommendation that she may be kept in the insane hospital at Allipore or any institution for the deaf and dumb that there may be in Calcutta, until she can take care of herself.

*Resolution of the Nizamut Adawlut* No. 792, dated 17th September, 1856, (Present: Messrs. E. A. Samuells and D. I. Money.) The Court having attentively considered the proceedings held on the above trial, observe that the judge considers the prisoner to be an idiot; but has taken no evidence upon that point. The Court direct the papers be returned with instructions that he will take the evidence of the civil surgeon and of persons acquainted with the prisoner, as to her state of mind, previous to the commission of the crime with which she is

Prisoner, a deaf and dumb idiot, excused in law of the crime charged, as being of unsound mind, and unable to know that she was doing an act prohibited by law in exposing and abandoning her infant.



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charged at the present time; and that, in resubmitting the case for orders, he will report whether she appears to have been deaf and dumb from her birth, or to have become so by disease or accident.

In reply to the above Resolution, the judge submitted the following letter No. 151, dated 9th December, 1856.

"In conformity with the instructions of the Court's resolution No. 792, of the 17th September last, I have the honor to resubmit the papers of the case of Mussamut Jarree, charged with abandoning her newly born child. I ought to explain that the delay has been occasioned by the imperfect enquiry first made by the darogah and afterwards by my absence on sessions duty at Balasore.

"Her two half brothers and two other witnesses say, that she has been deaf and dumb from her birth, and that she cannot converse by signs, though she can show by pointing to her mouth that she is hungry, &c. She has had no instruction, but was allowed to wander about begging her bread. She would, I believe, by English law, be accounted an idiot, and the evidence of Doctor Collyer proves her to be so.

"I therefore beg leave to recommend that she be excused from punishment, and that a recommendation be sent to the Government of Bengal that she may be kept as an idiot in the insane hospital in Calcutta or any other similar institution."

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court, having read the papers of the original proceedings in this case, and of the further inquiry as to the prisoner's state of mind, previous to the commission of the crime, and subsequently, and as to the prisoner's having been deaf and dumb from her birth, (Vide the Court's Resolution of 17th September, 1856, No. 792,) concur in the opinion expressed by the sessions judge. The Court consider that the prisoner Mussamut Jarree is of unsound mind, incapable of discriminating between right and wrong, and of understanding the nature of the act of which she has been guilty, or that she "was doing an act forbidden by the law of the land." The Court therefore acquit the prisoner Mussamut Jarree, and direct that a reference be made to Government for her detention, on the ground of idiocy, in some suitable Asylum, as provided by Section 4, Act IV. 1849.

The Court would draw the Magistrate's attention to the very imperfect report made by the darogah when forwarding Mussamut Jarree to the sudder station. He has taken credit to himself for making great exertions in tracing and apprehending the prisoner, but has failed to mention what steps he took for that purpose; while from the evidence of the witnesses, Kartick and Anadi, taken before the magistrate, on 7th July, 1856, it would appear that the woman was known to have been wandering

about mowza "Koorara" for apparently about a month after having exposed her child. What the distance of that village is from the place where the infant was exposed, is not stated; but it is possibly at no great distance, or these witnesses would not probably have been aware of the circumstance. It speaks little for the activity of the police, that a well-known beggar, deaf and dumb from her birth, was able to commit a crime and avoid apprehension for about a month, being apparently, at no time at any great distance from the scene of that crime.

1857.  
January 19.  
Case of  
MUSSAMUT  
JABREE.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

SOONDUR SAHOO.

Midnapore.

CRIME CHARGED.—1st count, dacoity on 21st March, 1846, in the house of Puddolochun Das, inhabitant of Tajnuggur, thannah Basoolia; 2nd count, dacoity on 20th December, 1851, in the house of Keenaram Roy, inhabitant of Basdebpore, thannah Nemal; 3rd count, dacoity on 11th February, 1853, in the houses of Onoopram Chund and Dundeeram Chund, inhabitants of Julladarhee, thannah Bamoonara; 4th count, being by profession a dacoit and having belonged to gangs of dacoits under Sirdars, Dunnoo Bhooya and others (convicts.)

1857.  
January 20.  
Case of  
SOONDUR  
SAHOO.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 8th November, 1856.

*Remarks by the officiating sessions judge.*—The prisoner pleads "not guilty," but urges nothing material in his defence. His identity is sworn to by three approver witnesses, who denounce him as having committed two of the three dacoities on which he is arraigned.

Prisoner convicted and sentenced to transportation under Act XXIV. of 1843; his identity, and his participation in dacoities being deposed to by the approver witnesses; whose testimony was corroborated by independent evidence.

In the third dacoity two of the witnesses cannot speak to his having accompanied them, and the third states he did not do so, but was engaged in the last of the three dacoities committed in the same house, viz. that of Unoopram and Dundeeram Chund, whereas the second is the one charged against him.

The record of the cases, noted in the margin,\* have been laid before the court.

\* *Nuthee* No. 129, dacoity in the house of Puddolochun Das.

*Nuthee* No. 122 dacoity in the house of Keenaram Roy.

In regard to the second case, my remarks were submitted to the Court on the trial of Sham Das and Che-

1857.

January 20.

Case of  
SOONDUR  
SAHOO.

*Nuthee* No. 156, attempt at dacoity in the house of Unoopram Chund and Dundeeram Chund.

rant a conviction.

The third case, it is unnecessary to dwell upon, the witnesses, not having implicated the prisoner in that crime by their evidence.

The record of case No. 291, shews a dacoity to have been committed on the 21st March, 1846, in the house of Puddolochun Das of Tajuuggur, pergunnah Dhoro. From a report with the record, dated 23rd March, 1846, it appears that Fukeer Mahomed Burkundaz had been deputed on the previous day to look after one Soondur Sahoo, a chowkeedar who had for some days neglected to make his daily report at the thannah.

The burkundaz sent information that the said chowkeedar, Narain Geeree, (to whose gang he is deposed to have belonged) and Khosal Geeree, all of the village of Bamoonsasun, together with other bad characters, had absented themselves for three days, and had not yet returned. The mohurrir who had been deputed to go the rounds in that neighbourhood was written to by the darogah, informing him of what he had learnt, and ordering him to keep a sharp look out for the absent men. The mohurrir got to the aforesaid village at midnight of the 22nd March and found Chedam Das of Sotisher, Manick Geeree and Narain Das, in the custody of the burkundaz on the suspicion of the villagers. Narain and Khosal Geerees could not then be found, and the mohurrir having stationed the burkundaz at their houses returned to the thannah with Soondur Sahoo Chowkeedar, and the three prisoners above-named. The Burooah of the village Daveechorun Chuckerbutty, who had accompanied the mohurrir, deposed that the captured men had absented themselves since the 20th and were arrested on their return home on the night of the 22nd, that they were bad characters and had gone for no good purpose. Shortly after this, Fukeer Mahomed burkundaz arrived with Khosal and Narain Geerees.

They were examined separately by the darogah when Khosal on the 23rd idem, confessed giving up in cash rupees 127-8. He stated that on information received from Sonadhur Khandah, he, Narain Geeree, Sham Chuckerbutty, Punchum Singh, Chedam Das, Soondur Sahoo, the prisoner of this trial, Mudhoo Bhooya and Dhunnoo Bhooya, witnesses Nos. 3 and 2, of this trial and others committed a dacoity some thirty miles off.

On the 24th March, these two witnesses (approvers) were arrested, and denied the charge. The case was sent up for trial at the sessions, when Keennoo Puramanick, Khosal Geeree, Sonadhur Khandah and six others, were convicted by the sessions

dam Das, whom I acquitted, there being no corroboration on the record of the evidence of the approvers which would war-

judge on 11th July, 1846, and sentenced to nine years' imprisonment.

The record of this last case amply corroborates the testimony of two of the approvers. The prisoner was arrested under very suspicious circumstances, was named in the confession of Khosal Geeree, at the time, and was sent in to the magistrate, though not committed for trial. The witnesses for the defence can state nothing in his exculpation, and the others denounce the prisoner as a bad and suspicious character. I therefore convict him of having belonged to a gang of dacoits, and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court have carefully perused the evidence of the witnesses for the prosecution, (Dunnoo Das, Dunnoo Bhooya, and Mudhoo Bhooya,) and that for the defence; as also the records of the cases forwarded by the sessions judge. The identity of the prisoner, and his participation in the dacoity in the house of Puddolochun Das, (record No. 291,) are clearly deposed to by the witnesses, (approvers :) and those depositions are supported by the record of the time, 1846. The absence of the prisoner, without reason, from his home at the time of the dacoity for two or three days; his being named as one of the dacoits on Khosal Geeree's first apprehension, i. e. two days after the dacoity; the coincidence in the detail of circumstances mentioned as to the manner of the perpetration of the dacoity and as to the division and production of the plundered property as stated in the record of the time (1852,) and by the witnesses now; the conviction of Khosal Geeree and seven others, on the 11th July, 1846, of the dacoity referred to; the distinct evidence at the time, and now, of the prisoner belonging to a gang of dacoits, are points sufficiently established to warrant the conviction on the first and fourth counts. The prisoner's defence is contradictory; for, he first states that he was denounced, owing to a quarrel with the witnesses, and an assault while in *kajut*; and next states in his petition and defence in the sessions, and in his petition here, that the cause of enmity was, that he restrained the witnesses from consorting with Narain Geeree, (the sirdar of the gang) as he was a bad character. The prisoner's witnesses depose to prisoner being a bad character.

We convict the prisoner of dacoity in the house of Puddolochun Das, (first count,) and of belonging to a gang of dacoits (fourth count,) and sentence him to be transported for life.

1857.

January 20.

Case of  
SOONDUR  
SAHOO.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT, HERDYAL GOWALA AND ANOTHER

Chota  
Nagpore.*versus*

1857.

January 21.  
Case of  
BANEE  
and others.

BANEE (No. 1, APPELLANT,) BURGEE (No. 2, APPELLANT,) RUTTUN (No. 3,) LULEETA (No. 4, APPELLANT,) MOONEN (No. 5,) LUCHMUN (No. 6,) DOOKHUN (No. 7,) THAKWA (No. 8,) CHETWA (No. 9, APPELLANT,) AND DUSSAEUAN (No. 10.)

Prisoners convicted on their confessions, and discovery of stolen property; and confessions of accomplices; corroborated by independent and satisfactory evidence. Attention called to Circular Order 31st Aug. 1853, on preparation of Calendar, and 16th of June 1843 No. 148 on Police Reports.

CRIME CHARGED.—Dacoity with torture in the houses of the prosecutors and robbed therefrom property to the value of Rs. 699-7; 2nd count, having stolen property in their possession.

CRIME ESTABLISHED.—Nos. 1 to 9, dacoity with torture and No. 10, accessory after the fact in the above case.

Committing Officer.—Captain R. T. Leigh, junior assistant commissioner, Korudah sub-division.

Tried before Captain W. H. Oakes, deputy commissioner of Chota Nagpore, on the 26th September, 1856.

*Remarks by the deputy commissioner.*—By the confessions of the prisoners Nos. 1 to 9, before the police officer and before the assistant commissioner, and by the finding of portions of the plundered goods with these prisoners, the crime charged is proved against them.

The confessions of the prisoner No. 10, are to the effect that he became privy to the dacoity after the fact, and that he took a share of the plundered property.

It appears that the prisoners Nos. 4 and 9, left a portion of the plundered goods with the prisoner No. 11. But there is no evidence that she took it with guilty knowledge.

The evidence of the prosecutrix Musst. Jugnee proves that a lighted match was applied to various parts of her person in order to compel the disclosure of any concealed property. It does not appear by whom this outrage was committed.

The prisoners have in their defence stated that their confessions were extorted, but of this no proof has been offered, and there is no reason to believe that the confessions before the junior assistant commissioner were other than voluntary.

The jury find the prisoners Nos. 1 to 9 inclusive, guilty of the dacoity as charged and the prisoner No. 10, guilty as accessory after the fact. The prisoner No. 11, *not guilty*.

Concurring in this verdict I sentence the prisoners Nos. 1 to 9 inclusive, to be imprisoned for fourteen years each with hard labor in irons, and prisoner No. 10, to be imprisoned for five years in like manner.

The prisoner No. 11, is acquitted.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Prisoners No. 1, Bane, No 2, Burgh, No. 4, Luleeta, No. 9, Chetwa, have appealed. The grounds of their appeal are, *firstly*, that their witnesses were not duly examined; *secondly*, that their confessions were extorted in the mofussil by ill-treatment at the hands of the police, and that they repeated those confessions before the Deputy Commissioner under the influence of fear of the police. *Thirdly*, that but very little of the property was found, whereas had there really been that amount taken which was represented by the prosecutor, more must have been found.

The *first* plea is contradicted by the record. Prisoners Nos. 1 and 2, named no witnesses. Prisoner No. 4, called three witnesses; the evidence of two of them was taken, and the third was not to be found. Prisoner No. 9, called two witnesses; and the evidence of both was taken.

The Court have to observe in this place, that there is no apparent reason on the record for the fact, that although the original defences were taken on the 15th and 16th of March, the question, as to the prisoner's wishing witnesses to be called for the defence, was not put till the 16th of May; nor for the commitment not having taken place till the 7th of August.

The *second* plea is contradicted by the evidence in respect to prisoners Nos. 1, 2 and 4. In regard to prisoner No. 9, one witness, Ooncha Bunya No. 14, states that prisoner No. 9 did not confess at first; but that, after force and oppression (*zoor zoolum*) by the darogah, he did. This witness was called upon to specify what was done, and stated that the force and oppression consisted in prisoner No. 9, being pinioned (*moshk-banda*) and nothing more. The point will be again noticed hereafter.

The *third* plea is not one, which by itself, and from the mere inference alone deducible from it, can overweigh direct and sufficient evidence; moreover, the Court observe, that much of the property was cash and ornaments, the latter easily melted or broken up.

It remains to consider, whether sufficient evidence is, on the whole, on the record to warrant the conviction.

There are the consistent and plain narratives of the prosecutor and his witnesses to the fact of the dacoity; and the discovery with the prisoners, or with those pointed out by them, of the property, and its identification, by prosecutor and his aunt. There is no pretence of having recognised any one at the time, nor any material contradiction or exaggeration in the statements for the prosecution. There are the confessions of the four prisoners, who appeal, as made before the police, and before the assistant commissioner. They are duly attested, and a careful comparison of their tenor and terms, and of the evidence to them, leads us to believe that they are true. Further, we think

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January 21.

Case of  
BANE and  
others.

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Case of  
BANER and  
others.

that the pinioning prisoner No. 9, although this never ought to be done, except to prevent escape, is not alone sufficient to destroy the credibility of his confession, especially, when in all other respects no other improper proceedings as to the confessions of the prisoners, at the police, and no undue influence of fear of the police, or the fact of the confessions being otherwise than quite voluntary when the prisoners confessed before the assistant commissioner, are in any way apparent.

These confessions are supported by the evidence to the identification by prosecutor and others of the property found in the possession of the prisoners, or in that of other parties indicated by the prisoners, on their apprehension.

They are also supported by the fact of the accomplices, who have *not* appealed, having confessed to the same effect, as the prisoners who have appealed; and although of course the confession of an accomplice should *per se* be no sufficient evidence of the guilt of other persons, still when such confessions are supported by independent corroborative evidence to the finding of the property, as mentioned in those confessions, and by the evidence for the prosecution, such confessions of accomplices can, to a certain extent, be considered in evidence by us.

We think, therefore, that the prisoners, who have appealed, have been properly convicted, and we reject their appeals.

We deem it right to call the attention of the lower courts to the fact that the column, referring to circumstantial evidence in the calendar, has not been prepared in that separate detail, as to individual prisoners and specific proof, which is required by Circular Order 31st August, 1853, No. 111. The Court have also to remark that the police reports are not clear, in regard to the first clue to the perpetrators of the dacoity, previous to the apprehension of Dusseeyan, prisoner No. 10. For instance it is only in the darogah's final report of the 15th March, i. e. after the apprehension of the prisoners, and the finding of the property, that Sadooram's name is for the first time mentioned, as the first informant, on whose information the police proceedings were apparently based. Again Sadooram states in the mofussil (where only he was examined) that he had learnt from Budun Kahar, that the dacoits had been seen dividing their spoil at a certain spot; whereas, Budun states, that his information was derived from Sadooram. In the last column of the calendar, Bathoo Burkundaz is stated to have become acquainted with the circumstances; but *how so* is not stated; though it is clear from Budun's statement to the police, that he told Bhatoo Khan. The final police report too is not in the clear form required by the rules in Circular Order 16th June, 1843, No. 138, para. 4. The Court make these remarks in order that the lower courts may have all such points as clearly set forth as possible, in their records and calendars, in future.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

KANGALEE DHARAH.

Midnapore.

1857.

**CRIME CHARGED.**—1st count, dacoity in the house of Kaleeddas Nag, darogah of Ghat Roosoolpore, thannah Nimal; 2nd count, dacoity in the house of Kishtomohun Mahitee nephew of Santiram Mahitee, inhabitant of Saoolalchuch, thannah Kunchunnugore; 3rd count, being by profession dacoits and having belonged to gangs of dacoits under sirdars Dhunnoo Bhoonya and others, convicts.

January 21.

Case of  
KANGALEE  
DHARAH.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 8th November, 1856.

Prisoner convicted and sentenced under Act XXIV. of 1843, upon evidence of

*Remarks by the officiating sessions judge.*—The prisoner pleads *not guilty*, and in his defence cites witnesses only to character. Three approvers swear to his identity and mention some of his family. They are near neighbours of the prisoner and clearly identify him. They also denounce him, as having been their accomplice in the dacoities with which he is charged.

approvers, corroborated by independent confessions and records of date some years previous.

In support and corroboration of their testimony, the records of cases noted in the margin,\* have been laid before the court.

\* *Nuthee No. 156.*—Attempt at dacoity in the house of Unoopram Chund and Dundeeram Chund.

*Nuthee No. 623.*—Attempt at dacoity in the house of Kishtomohun Mahitee, nephew of Santiram Mahitee.

*Nuthee No. 484.*—Dacoity in the house of Kaleeddas Nag (ghat darogah.)

The circumstantiality, with which the witnesses have deposed to the two offences first noted, leaves no doubt of their occurrence, however they may have been hushed up at the time; but as the names of

the dacoits did not transpire at the time, it would be uselessly taking up the time of the court to enter into more detail. The case No. 484, of the dacoity committed in Kaleeddas Nag's house, amply corroborates the testimony of the approvers against the prisoner. The record shews a dacoity to have been committed on the night of the 23rd June, 1852, in the house of Kaleeddas Nag, a salt darogah, stationed at ghat Roosoolpore; and that property to the value of Rs. 2,380-11, was plundered. The prosecutor deposed to having recognised several of the dacoits, amongst them Dhunnoo and Mudhoo Booeeahs of Muntooparah, witnesses Nos. 2 and 3, of this trial.



1857.

January 21.

Case of  
KANGALEE  
DHARAH.

On information given by one Puhulnath Geeree, Chundee Poriah was arrested on the 27th idem, and the following day confessed to having committed the dacoity together with Dhunnoo Das witness No. 1 of this trial.

Prisoner No. 5, Kangalee Dhara, Sumbooram Naik, Dabee Rana, Dhunnoo Mundul, Fukeer Booe, Narain Pandah, Goluck Jana, Dhunnoo Booeah witness No. 1, of ditto, Mudhoo, witness No. 2, ditto, Choitun Poriah his uncle, was also implicated by him. This man confessed before the magistrate, naming all the witnesses (approvers) and the prisoners abovementioned of this trial, as well as Keshob Poriah and Choitun Poriah. Choitun Poriah was arrested on 27th June, and the next day confessed, naming as his accomplices, amongst others, Dhunnoo Das, witness No. 1, prisoner No. 5, Kangalee Dhara, Sumbooram Naik, Chundee Poriah (nephew of examinait), Dhunnoo Khanrah, Davee Rana, Narain Rana, Gokul Jana, Dhunnoo Booeah witness No. 1, and his brother (in all probability this is witness No. 2.)

This man also confessed before the magistrate, naming Dhunnoo Das witness No. 1, Kungalee Dhara, prisoner No. 5, of this trial, Shumbooram Naik, Fukeer Booe, Chundee Poriah, Gokool Jana, Dhunnoo Booeah witness No. 2, Shumbooram Naik was then arrested and on 28th June, 1852, confessed before the police to his having committed the dacoity in company with Chundee Poriah, Kungalee Dhara, prisoner No. 5, Mudhoo Booeah, witness No. 3, Dhunnoo Booeah witness No. 2, approvers of this trial; Mogun Gooriah, Dhunnoo Das, witness No. 1, Dhunnoo Khanrah, Modoo Samoo, Davee Rana, Gokul Jana, and others.

This man also confessed to the crime before the magistrate, naming the aforesaid prisoner and witnesses (approvers). Keshob Poriah was arrested and in his confession before the police taken down on 28th June, 1852, implicated Dhunnoo Das, witness No. 1, Chundee Poriah, confessary's elder brother, Choitun Poriah, Sumbooram Naik, Kungalee Dhara, prisoner No. 5, Goordiee Dhara, his brother Dhunnoo Khanrah, Davee Rana, Dhunnoo Seet, Dhunnoo Booeah, witness No. 2, Mudhoo Booeah, witness No. 3, Kisto Jana, Gokul Jana, inhabitants of Chundeebetta, adding that the last named had twelve men under him.

This man also admitted his guilt before the magistrate, naming amongst others, the prisoner and witnesses aforesaid of this trial.

Sreemutty Keymee, mother-in-law of Chundee Poriah, admitted, before the police and the magistrate, that her daughter Chundee's wife deposited in her house the shawl and mosquito curtain, which were then produced.

The above record shews that four of the confessing prisoners

at the time, named the prisoner, as their accomplice, in the said dacoity both before the police and the magistrate; nothing urged in his defence, refutes the testimony of the approvers or the corroboration of it, which is found in the record. I therefore convict the prisoner of having belonged to a gang of dacoits, and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court, having perused the proceedings in this case, observe that the evidence of the three witnesses (informers) is fully corroborated by the confessions of the prisoners Chundy Poriah, Choitun Poriah, Sumbooram and Keshob Poriah, taken by the darogah and the magistrate when they were apprehended in 1852, after the perpetration of the dacoity in the house of Kalee Das Nag. They were then convicted of the dacoity and sentenced to imprisonment for nine years each; and in their confessions not only mentioned the name of Kangalee Dhara, the prisoner in the present trial, and of the witnesses (informers) as participating in it, but detailed circumstances regarding the route by which they came, the place at which they made their preparations, the manner of entry into the house, and the partition of the plunder, which corroborated the depositions given by the witnesses in this case. Part of the property plundered is stated to have been cash taken off by individual dacoits; and the confession of Chundy Poriah, and the record of his apprehension in 1852, shew that he then produced in cash Rs. 127-8, concealed under ground, as his share of the plunder. The Court therefore concur in the conviction of the prisoner on the 1st and 3rd counts on which he has been committed, and sentence him to transportation for life.

1857.

January 21.

Case of  
KANGALEE  
DHARAH.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Midnapore.

CHEEDAM DAS.

1857.

January 23.

Case of ~  
 CHEEDAM  
 DAS.

Prisoner convicted and sentenced under Act XXIV. of 1843, on the evidence of approver witnesses corroborated by other independent evidence, and by antecedent records. How far previous acquittals of specific dacoities affect general charge. The explanation as to measures taken to prevent collusion, satisfactory.

CRIME CHARGED.—1st count, dacoity on the 21st March, 1846, in the house of Juggunnath Das (plaintiff), cousin of Puddolochun Das resident of Tajnuggur, thannah Dasoolia; 2nd count, dacoity on the 8th January, 1853, in the house of Ram Ruttun Aghustee (plaintiff), resident of Chuck Hujrutpore, thannah Nemal; 3rd count, dacoity on the night of the 22nd May, 1855, in the house of Doondeeram Chund and others (plaintiffs), inhabitants of Julludarhe, of thannah Bamoonarah; 4th count, being by profession a dacoit, and having belonged to a gang of dacoits under Sirdars Dunnoo Bhoonya and others (convicts).

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 13th September, 1856.

*Remarks by the officiating sessions judge.*—The prisoner pleads *not guilty*, and urges in his defence that he has already been acquitted of the charge by the Court of Nizamut Adawlut.

On the 20th June last, I cancelled this commitment on the ground, that the general charge of “being by profession a dacoit and with having belonged to a gang of dacoits” of which the prisoner and his brother Shaam Das had been acquitted on the 14th April last, by the superior court, had been reiterated. On a reference made at the request of the committing officer, it was ruled (Register’s letter No. 722, dated 20th August last,) that the commitment was wrongly quashed. I have therefore proceeded with the trial, no specific acts of dacoity were charged against these men in the former trial.

The evidence adduced against the prisoner is that of three approver witnesses, the fourth man “Narain Geeree” named in the calendar has forfeited his conditional pardon, and as his confession cannot be received as evidence against another party, I have refrained from taking down the depositions of the attesting witnesses named in the column of circumstantial evidence.

The witnesses identify the prisoner, and mention his connection with one Nokouree Hazrah of Awoorea. They further denounce him as having been concerned in the dacoities laid to his charge.

The record of the cases noted in the margin\* have been laid before the court in corroboration and support of the above testimony.

\* *Nuthee* No. 291, dacoity in the house of Juggunnath Das (plaintiff), cousin of Puddolochun Das.

*Nuthee* No. 2, dacoity in the house of Ram Rutton Aghustee (plaintiff.)

Royedad—Dacoity in the house of Doondée Ram Chund and others (plaintiff.)

1857.

January 23.

Case of  
CHEEDAM  
DAS.

The first case No. 291, shows a dacoity to have been committed on the 21st March, 1846, in the house of Puddolochun Das of Tajnuggur, per-

gunnah Dhora, thannah Basoolia. From a report with the record, dated 23rd March, 1846, it appears that Fukeer Mohumud Burkundaz had been deputed on the previous day to look after one Soondur Sahoo a chowkeedar, who had for some days neglected to make his daily report at the thannah. The burkundaz sent information that the said chowkeedar, Narain Geeree and Khosal Geeree, all of the village of Ramon Sason, together with other bad characters had absented themselves for three days, and had not yet returned. The mohurrir, who had been deputed to go the rounds in that neighbourhood, was written to by the darogah informing him of what he had learnt, and ordering him to keep a sharp look out for the absent men. The mohurrir got to the aforesaid village at midnight of the 22nd March, and found Cheedam Das of Sotishur, the prisoner of this trial, Manick Geeree, and Narain Das, in the custody of the burkundaz on the suspicion of the villagers. Narain Geeree, to whose gang the prisoner is stated to belong, and to whom allusion is made in the 4th para. of this letter, and Khosal Geeree could not then be found; and the mohurrir having stationed the burkundaz at their houses, returned to the thannah with Soonder Sahoo Chowkeedar and the three prisoners abovenamed. The Burooah of the village, Davee Choron Chuckerbutty, who had accompanied the mohurrir, deposed that the captured men had absented themselves from the 20th, and were arrested on their return home on the night of the 22nd March that they were bad characters, and had gone for no good purpose. Shortly after this, Fukeer Mohumud Burkundaz arrived with Khosal and Narain Geerees.

They were examined separately by the darogah, when Khosal on the 23rd idem confessed, giving up in cash Rs. 127-8.

He stated that, on information received from Sonadthur Khan-dah, he, Narain Geeree, Shaam Chuckerbutty, Puncham Singh, Cheedam Das of Sotishur the prisoner, Soondur Sahoo, Mudhoo Booeeah, Dhunnoo Booeeah witnesses Nos. 1 and 3, of this trial, and others committed a dacoity some thirty miles off.

On the 24th March, these two witnesses (approvers) were arrested, and denied the charge. The prisoner of this trial Cheedam Das, was also arrested, denied his guilt, and was discharged by the darogah. The case was committed for trial at

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the sessions and Keenoo Paramanick, Khosal Geeree, Sonadhur Khandah, and six others were convicted by the sessions judge on the 11th July, 1846, and sentenced to nine years' imprisonment.

From the record of case No. 2, it appears that a dacoity took place on the night of the 8th January, 1853, in the house of Ramruttun Agustee of Chuck Huzrut, pergunnah Ameerabad, when property worth Rs. 250 was plundered.

The dacoits effected an entrance, it is said by getting over the wall by a tree.

Cheedam Das, the prisoner of this trial, as also Narain Geeree were arrested as bad characters.

Cheedam Das denied his guilt, but admitted he had been before sentenced for burglary.

The witness No. 2, of this trial Dunnoo Das, Magunee Sahoo, Shaam Das Chuckerbutty, Davee Chuckerbutty, Beem Pator, Madhob Pator were arrested, but discharged by the police for want of evidence.

The record of the third offence charged No. 119, shows a dacoity to have occurred in the house of Doondeeram Chundo, and Kirteenaraen Chundo, on the 22nd May, 1855, in the village of Joladaree in pergunnah Jolahmootah. The burkundaz of the *pharee*, chowkeedars, and villagers appear to have followed the dacoits, and Mudhoo Aich, a servant of the prosecutor, wounded one of them with a fish-prong; but the robbers thirty or forty in number managed to carry off their wounded companion.

It further appears from the record that on the 3rd June following, the darogah was passing through the village of Kooreepokoria, when his bearers put down the *palkee*, and one of them by name Naraen Doss, went to fetch fire from the house of a villager also named Naraen Doss. The bearer seeing that this man had three regularly placed wounds just above the navel, told the darogah, who immediately arrested him.

Naraen Doss, being examined confessed that he, Soonder Geeree and Madhob Pator, went to the house of Naraen Geeree, examinant's brother-in-law, some thirteen days previous to his capture; that they then together with Koronakur Geeree, the brother of Naraen, crossed the Soonia river in a boat, and proceeding to a tank near a village in pergunnah Jolahmootah, were joined by twenty others one of whom said, Come along, we will commit a dacoity in Chund's house; that they went along for another *cross*, lighted their torches and attacked and plundered the house; that as they were going off one of the villagers wounded him in the stomach with a fish-prong; that two of the dacoits, a Brahmin and Madhob, conveyed him to a tank two *cross* distant from the scene of the dacoity where they left him to his fate. He managed to get home in two days.

Madhob Pattor was arrested, and on the 4th June, confessed naming as his accomplices in the crime Naraen Doss, Naraen Geeree, Seetaram Doss, Cheedam Doss of Sotishur the prisoner of this trial and others.

This man also confessed before the deputy magistrate on the 7th June, 1855, when he implicated the aforesaid Cheedam Doss, the prisoner of this trial, Koronakur Geeree and others.

Sectaram Doss was arrested, and in his confession taken before the police on the 4th June, named Naraen Geeree, Madhob Pattor, Cheedam Doss, of Sotishur, and Koronakur Geeree.

He also confessed at the foudary on the 7th June, naming as his accomplices amongst others Cheedam Doss, the prisoner, Madhob Pattor, Naraen Geeree and Koronakur.

The other confessing prisoners of that time did not name the prisoner Cheedam Doss.

On the trial at the sessions Naraen Doss, Seetaram Doss, Madhob Doss Pattor, and others were convicted on 25th September, 1855. In appeal only Musst. Anundinohee was acquitted by the Court of Nizamut Adawlut. Cheedam Doss, son of Obiram Doss, caste Bustom, aged forty, of Sotishur, was arrested but discharged by the police.

The record of the cases afford such ample corroboration of the testimony of the approver witnesses, that reliance may be safely placed on their evidence. There is no room left to doubt the guilt of the prisoner and his association with the gang of Naraen Geeree, I therefore convict him of the offence of having belonged to a gang of dacoits and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This prisoner was tried before Messrs. Dick, Raikes and Patton, on the 14th April, 1856, (Vide p. 692, Nizamut Adawlut Reports, Vol. G. Part. I.) He was charged with being by profession a dacoit and belonging to a gang of dacoits (Vide p. 701). The above judges held that “in order to conviction of a prisoner as a professional dacoit, it is necessary not only that some specific act or acts of dacoity be proved against him, but also charged in the calendar, as well, as merely belonging to a gang.” No specific dacoity being charged in the calendar, prisoner was thus acquitted; but subsequently recommitted, charged with the specific dacoities in the calendar, in addition to the general charge. The zillah judge cancelled this last commitment on the ground “that the general charge of being by profession a dacoit, and with having belonged to a gang of dacoits of which the prisoner and his brother Sham Doss, had been acquitted on the 14th April last, by the superior court had been reiterated.” The full Court of Nizamut Adawlut, however, on a reference from the committing officer

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on this point, ruled (Vide Register's letter 20th August, 1856, No. 722,) that the judge was wrong in quashing the commitment, and that "under this Court's ruling of October, 1852, it is only necessary to prove some specific acts of dacoity to warrant a conviction of the charge of belonging or having belonged to a gang. As long as the specific dacoities charged are not those on which the prisoner has been acquitted, the fact of his acquittal on the general charge, supported by those dacoities, will not prevent his being re-tried under the general charge as arising from complicity in other dacoities, although those dacoities had been committed previous to his former acquittal."

The present calendar contains charges of three specific dacoities, and the general charge of belonging to a gang of dacoits. The dacoity in the house of Kenaram Roy, referred to in p. 700, of the trial of the 14th April, is not one of those now charged. The dacoity in the house of Ramrutton Agusthee, charged in the second count, in this calendar was not charged in the calendar of 14th April, although the record of it was referred to in it in corroboration of the evidence adduced.

The prisoner has put in a petition of appeal, urging his long detention and his previous acquittal.

To the former matter, we shall refer hereafter. On the latter, it is sufficient to refer to the previous remarks.

After a careful perusal of the evidence, we think the prisoner's complicity in the dacoities specifically charged in the first and third counts proved, and we also consider the fourth count or general charge proved.

In the dacoity charged in the first count, the evidence of the witnesses (approvers) as to this prisoner is borne out by the confession of Khosal Geeree, (not a witness) and by the fact of Khosal, producing Rs. 127-8, as plundered in that dacoity on his apprehension, both events being only two days after it in 1846, and by other minute particulars. Khosal and others implicated by him were sentenced to nine years' imprisonment for that dacoity.

In the dacoity charged in the third count, the evidence of the witnesses (approvers) as to this prisoner is borne out by proof of various particulars connected with it, *e. g.* as to the wounding of Naraen Doss; the places where members of the gang, including this prisoner, joined; the manner of proceeding to, committing, and separating after the dacoity, stated in the confessions of Madhob Pattor and Seetaram Doss, who also implicate prisoner. These were not witnesses in this case; but dacoits convicted for the dacoity charged in this third count, against this prisoner. (Vide Nizamut Adawlut Report, page 894, December 14th, 1855.)

Further, the witnesses (approvers) were convicted by the Nizamut Adawlut (p. 383, 8th February, 1856,) and the records

of the dacoity charged in the second count, of this calendar, and of that in Kenaram Roy's house (Nizamut Adawlut Report, p. 692, 14th April, 1856,) were portions of the proof on which that conviction was made. Finally, the Nizamut Adawlut (Messrs. Raikes and Patton,) in the present case called for certain explanations,\* as to the circumstances attending prison-

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\* *From the Register of the Nizamut Adawlut to Officiating Sessions Judge, of Midnapore, No. 883, dated 23rd Oct., 1856.*

The Court, having had before them your letter No. 260, dated the 13th instant, referring the trial of Cheedam Doss, charged with dacoity and having belonged to a gang of dacoits, request that you will procure attested copies of the general confessions of three\* approver witnesses, and also a statement of the circumstances under which they were severally made approvers and when, whether for the particular case now under

trial or as general approvers.

*From the Asst. Genl. Supt. to the Sessions Judge of Midnapore, dated 3rd Nov., 1856.*

I have the honor to acknowledge the receipt of your letter, No. 300, of the 31st ultimo, together with the copy of letter No. 883, of the 23rd ultimo, from the Register of the Sudder Nizamut.

In answer, I beg to state that the confessions of the three approver witnesses† were taken in the months of February and March, 1856; that during the time the confessions were being made, every care to prevent the possibility of collusion was taken, each prisoner was under

† Dhunnoo Bhoonya,  
Dhunnoo Doss,  
Mudhoo Bhoonya.  
a separate guard in a different part of my lines, and that so far from their having been made approvers for the particular case referred to. At the time I was taking the confessions, the prisoner Cheedam Doss' papers were before the sudder, and I thought there was no chance whatever of his acquittal. The decision of the sudder in the case of Sham Doss and Cheedam Doss is dated April 14th, 1856, page 692, two months after I had commenced to take Dhunnoo Doss' confession and a month and more after I had finished all three. The witnesses were made approvers by me as they were known to be three of the principal sirdar dacoits in the Minal thannah, the worst portion of the district of Midnapore, already through their evidence upwards of twenty of the worst characters of that thanuah, have been convicted and several others are awaiting their trial.

With regard to the attested copies of the general confessions of the three approvers, I beg to state they were filed with the proceedings, at least attested copies of all the dacoities in which the witnesses had denounced the prisoner, however, I have taken the liberty of ordering my writer to attend at your office and shall feel greatly obliged (as I am at present at Balasore on duty) if you will kindly tell him, should there be any other papers you may think are required and they shall be forwarded to you with as little delay as possible.

With every "mis" the attested copies of the approvers original confessions (of the dacoities in which the prisoner or prisoners were denounced) are filed. All the names however of the accomplices mentioned are not entered in the "copies," only those of the prisoners who may be on their trial (with their numbers).

Trusting this explanation will be deemed satisfactory.



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*From the Register of the Nizamut Adawlut to the Sessions Judge of Midnapore, No. 1091, dated 17th Dec., 1856.*

The Court, having had before them your letter, No. 312, of the 11th ultimo, with its enclosures, would wish you to ascertain from the assistant general superintendent for the suppression of dacoity, under what circumstances the approvers' confessions were delivered, that is to say, whether they were at the time in custody on any specific charge, and, if so, when apprehended on the said charge; or having been tried and convicted were undergoing sentence, and if so, how the prisoners were made over to the assistant general superintendent, and how long they were under his charge before their confessions were recorded.

*From the Asst. Genl. Supt. to the Sessions Judge of Midnapore, No. 278, dated 28th Dec., 1856.*

I have the honor to acknowledge your letter, No. 356, dated 24th instant, and in reply beg to forward the following explanation for the information of the Sudder Court.

The approvers referred to were arrested by my orders in August,\* 1855.

\* From the 19th of August, 1855, to 29th of February, 1856, the prisoners were confined in the Jail *hajut* 3-4ths of a mile from my lines.

Committed as "professional dacoits" on the 26th December, and sentenced by the sudder, on the 19th February, 1856.

On receiving the warrants, I sent for the three men separately from the jail, explained to them their sentence and then asked each, and when they could not by any possibility have known my intention, whether they would confess; they offered to do so; that they could have previously colluded, appears to me to be most improbable for no one knew of my intention; they were taken suddenly from the jail where they could not have known that the warrants for their transportation even had arrived, and from the time they offered to confess they were kept apart with every care under distinct guards in separate guard rooms in my lines away from all the other approvers.

I would also beg to state that the prisoners arrested by my orders are not kept in the lines attached to the office but in the jail *hajut* 3-4ths of a mile off, so it is impossible they can ever have any communication with my approvers, and with regard to these three men I had at the time no approver from their part of the district.

My reasons for taking their confessions were, that they were three of the most noted dacoits in thannah Minal the worst portion of the Midnapore district. The confessions were taken with the greatest care. No promise was held out to the prisoners, although of course they had but one object in confessing, at the same time it was fully explained every day to each as his confession was being taken that if any falsehood was discovered in his statement, the sentence passed upon him would be at once carried out. On the confessions being completed I wrote the particulars of the case to the Secretary to the Bengal Government† and obtained the sanction of

† Letter No. 51 of the 24th March, 1856.

his Honor the Lieutenant Governor for their being employed as approvers. Since then, their evidence has been taken by the sessions judge on fifteen different trials and

We accordingly convict the prisoner on the first, third and fourth counts, and sentence him to be transported for life.

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in every case but one\* in which their evidence has been before the sudder.

\*Roopadhur Geeree, Narain Mullick, 25th October, 1856.

The judge's recommendation has been upheld.

With reference to the case of Cheedam Doss regarding which, this explanation has been called for, I would beg to make the following remarks.

It is quite true that the approvers' confessions were taken when the papers in Cheedam Doss' trial were before the sudder, but this very circumstance is surely conclusive that the approvers could have had no object whatever in denouncing the prisoner "falsely," he and his brother were well known to be two of the worst characters in the district. The approvers knew they were awaiting the sentence of the sudder and could not have anticipated their acquittal.

An acquittal which was only occasioned by an informality in the calendar.

In conclusion, I beg to state that the confessions of these three approvers have been tested in every way, and in my opinion are the most to be depended upon, the most truthful of any I have taken.

Trusting this explanation (which I have made as full as possible) will be deemed satisfactory.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND GOYARAM KHAN

*versus*

KISTO DOME (No. 12,) KHETTOO DOME (No. 13, APPELLANT,) SHEDESSER ALIAS SHEDA DOME (No. 14, APPELLANT,) EKARUDDY MULLICK (No. 15,) AND RAM DOME (No. 16.)

East-Burdwan.

1857.

January 25.

CRIME CHARGED.—Dacoity in the house of Taruknath Mookerjee, attended with the wounding of Doorgachurn Patuck witness, and plunder of property valued at Rs. 17-4-9.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East-Burdwan.

Case of  
KHETTOO  
DOME and  
others, ap-  
pellants.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 23rd July, 1856.

Remarks by the officiating sessions judge.—It is clearly proved that a gang of armed dacoits attacked and broke into the house of the joint-prosecutor's master, Baboo Taruknath Mookerjee; seized and wounded Doorgachurn Patuck, one of his servants; endeavoured to break open the door leading to the female apartments; and carried away some property belonging to Doorgachurn, joint-prosecutor; another servant had in the

One prisoner taken on the spot convicted. Another prisoner acquitted, his confession not being considered sufficiently supported.

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mean time escaped, the alarm was raised, the villagers turned out, the dacoits were forced to decamp and were pursued by the villagers; and eventually prisoners Nos. 12 and 13, were cut down by a villager, witness No. 2, and by the joint-prosecutor; prisoner No. 16, and his brother Jeebun, had been recognised in the house by the light of the torches; Jeebun had formerly been a servant of Taruknath and his brother had been in the habit of coming to Taruknath's house to see him.

Next morning, prisoners Nos. 12 and 13, confessed before the darogah.

The darogah obtained a clue that prisoners Nos. 14 and 15, had been engaged and wounded in the dacoity and had them apprehended. No. 14 confessed that he had accompanied the dacoits to Taruknath's house, and accounted for the marks on his person by saying that prisoner No. 12 had struck him for refusing to join them. No. 15 confessed that he had joined the gang before the dacoity, but stated that he had refused to accompany them, and that No. 12, had struck him in consequence and caused the injury visible over his eye. The gomashtha of the villagers, where those two prisoners reside, reported to the police, on the morning after the dacoity, that the prisoners were absent from their homes. The reports have been produced, and the distance of those villages from the scene of the dacoity precludes the supposition of contrivance and fraud.

Prisoner No. 16 was apprehended a few days afterwards: he confessed before the darogah and asserted that prisoners Nos. 14 and 15 were engaged in the dacoity.

Before the magistrate all the prisoners repudiated their confessions and averred that they had been extorted from them.

Prisoner No. 12, in his defence at the sessions, tells a very improbable story; he went to Taruknath's house, to seek employment, he was allowed to remain there for the night; the *garoo*, (found when he was apprehended) was lent to him to use; when the dacoits attacked the house he was wounded and robbed; and in the confusion he was mistaken for one of the dacoits. Two witnesses have been examined on his behalf but they do not assist him.

Prisoner No. 14 denies that he was among the dacoits. Before the magistrate he declared that the injury on his arm was caused in climbing a tree. The evidence of his two witnesses is not of any importance.

Prisoner No. 15 ascribes the report of his absence from his home to the enmity of his fellow villagers. He says that a bullock gored him with his horn and caused the wound above the eye. The evidence of two witnesses who deposed to having seen the goring, and of three witnesses who swear to an *alibi*, is highly improbable.

Prisoner No. 16 pleads an *alibi*, and three witnesses depose to the same but the statement is improbable.

The allegations of the prisoners, that their mofussil confessions were extorted from them, are unsupported by any evidence and are undeserving of belief.

I consider that the crime of dacoity with wounding has been satisfactorily established against all the prisoners, and I convict them of the same.

Prisoners Nos. 12 and 13 have been apprehended in former dacoities and have each been twice called upon to furnish security for their good behaviour as bad characters.

Prisoner No. 15 has also been similarly required to furnish security.

Prisoner No. 14 was apprehended in a dacoity and released.

I sentence prisoners Nos. 12 and 13 to fourteen (14) years' imprisonment in banishment with labor in irons, and to two additional years in lieu of corporal punishment. Prisoners Nos. 15 and 16 to fourteen years' imprisonment in banishment with labor in irons, and prisoner No. 14 to twelve years' imprisonment in banishment with labor in irons.

The courage of the villagers is highly commendable. I deem it right to authorize the payment of a reward of Rs. 50 to Tarachand Shee, witness No. 2, who cut down the dacoits, and a reward of Rs. 30, to the joint-prosecutor whose good conduct was also remarkable.

Farzand Ali, the darogah of thannah Balkishen, conducted the investigation in a creditable manner.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners have stated no special grounds of appeal. From the record, it appears that the villagers followed the dacoits for some distance, and that the prisoner Khettoo, was then knocked down in the pursuit and secured; and the next day made over to the darogah, before whom he confessed. The evidence against this prisoner is clear and satisfactory, and his subsequent statements, to the magistrate and sessions judge, of his being seized and beaten by the villagers without knowing why, are unworthy of credit.

Shedesser *alias* Sheda Dome, was apprehended on suspicion. The darogah states that "on making enquiries" he learnt that the prisoner and Ekramooddeen, had been absent from home; that he searched their houses, but found no property. On being apprehended, Sheda confessed to being *compelled* to commit the dacoity; and stated, that the wound on his right arm had been given by Kisto Dome, the Sirdar, who cut him with a sword because he was unwilling to join in the robbery; but before the Magistrate he repudiated his mofussil confession, and stated that the scar on his arm was caused by a scratch from the leaf of a *tāl* tree which he was cutting; and the civil

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surgeon in his letter of 24th March, 1856, says "it may have been caused in the way he alleges." Though the village gomashtah on the 6th Chyet reported the absence of the prisoner from his house on the night of the dacoity, yet his name is not mentioned by the confessing prisoners, Kishtna and Khettoo, who were captured by the villagers on the spot, and who would probably have implicated him, if, as Sheda states in his mofussil confession, he had communicated with them both previous to the dacoity, and was at first induced by Kishtna to accompany them under pretext of going to commit an affray.

The grounds for the apprehension of the appellant Sheda and the proof of his complicity in the robbery are similar to those against Ekramoodeen, who was released by orders of this Court (present: Messrs. Colvin and Patton) on 26th September, 1856, "as the wounds on his person and his absence from home on the night of the dacoity, together with his previous detention as a bad character, did not sufficiently support the confession imputed to him." And, on these grounds, we acquit the prisoner Shidessur *alias* Sheda Dome, No. 14, and reject the appeal of Khettoo Dome, No. 13.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

GOVERNMENT AND MUSST. JOMOONAH WIFE OF  
BABOO RAI CHUNG

*versus*

Backergunge.

BINDABUN MOOREE JEANEE.

1857.

January 24.

Case of  
BINDABUN  
MOOREE  
JEANEE.

CRIME CHARGED.—Wilful murder of Baboo Rai Chung who was severely wounded on the 27th August and died on the 13th September, 1856, through the effects of the wounds.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge on the 21st November, 1856.

The prisoner sentenced capitally; the deliberate intent to kill being shewn by his following deceased; and by the repetition and severity of the blows; by the

*Remarks by the sessions judge.*—The prisoner was committed to take his trial on a charge of "wilful murder of Baboo Rai Chung, who was most severely wounded on the 27th of August and died on the 13th of September, 1856, through the effects of the wounds."

In concurrence with the *futwa* I convict the prisoner of wilful murder of Baboo Rai Chung: the particulars of the case are briefly as follows.

The prisoner and the deceased married two step-sisters and for a time occupied the same "*barce*." It appears that the

wife of the prisoner was jealous of the wife of the deceased, whether with good cause I am unable to state. This feeling led to constant quarrels between the two women. The deceased, his mother, and his wife, separated from the prisoner and his wife and proceeded to the house of the witness No. 17 Surroop Jeanee, with whom they were residing when the murder took place.

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From the evidence of the wife\* of the deceased, it appears that the prisoner owed the deceased some money, and that a piece of cloth and a "*julkur pottah*" had been left by the prisoner with the deceased as security for the money borrowed. That about three days after the deceased had taken up his abode in the house of the witness Surroop Jeanee, the prisoner came to that house and demanded from the deceased the piece of cloth and the pottah, that the deceased refused to give them up without satisfaction of his debt.

instrument used; and by the character of the wounds. Remarks as to dying declarations.

It is in evidence, that the next day very early in the morning the deceased, who is a fisherman, went out to examine his fish basket, that he was then attacked† by the prisoner and

† No. 1, Roopechand Chung Jeanee.  
„ 2, Sookdeb, Jeanee.

most cruelly wounded by him with a "*dao*" on the forehead, face and other parts of

the body. The wounded man was brought into the station and was under medical treatment from the 28th August to 13th September, 1856, on which date he died from the effects of the wounds received by him.

On the 28th August, the deceased made a declaration implicating the prisoner; the declaration was made in the presence of the witnesses noted in the margin‡ who also depose "that the

‡ No. 6, Juggut Chunder Gangopadea.  
„ 25, Kally Kishen Chuckerbutty  
Bukshee.

deceased was at the time of making the declaration in danger of approaching death," the declaration there-

fore under the provisions of Section 29, Act II. of 1855 may be received as evidence.

The direct evidence to the murderous assault upon the deceased is to be found in the depositions of the witnesses noted

§ No. 1, Roopechand Chung Jeanee.  
„ 2, Sookdeb Jeanee.

in the margin§ there is also circumstantial|| evidence.

|| No. 13, Benaye Jeanee.  
„ 14, Bhuggoo Jeanee.  
„ 15, Kallachand Jeanee.  
„ 17, Surroop Jeanee and others.

The prisoner confessed in the mofussil, and his confession is attested by the witnesses noted in the margin¶ and appears to have been a voluntary one.

¶ No. 10, Kally Coomar Doss.  
„ 11, Mohesh Chunder Doss.

The lethal weapon a "*dao*" has been produced in court,

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it weighs 10 *chittacks* and a sketch of it is submitted with the record. This weapon the prisoner produced in the presence of the witnesses named in the margin.\*

\* No. 11, Mohesh Chunder Doss.  
,, 12, Nobin Chunder Doss.

The medical officer, Dr.  
M. Scanlon, witness No. 8,  
deposes that the lower jaw

was fractured, and the left year and the parts adjacent separated completely from the scalp; that the frontal bone was fractured and a portion of its internal plate driven in on the outer membrane of the brain; that the right eye, nose, and chin were wounded, the left wrist also was nearly cut through by an incised wound which exposed a portion of the wrist and joint; that these injuries were sufficient to cause death and that they might have been inflicted with a "*dao*" such as was produced in the court.

The prisoner before the magistrate and in this court pleads *not guilty*. In this court, the prisoner states that the wife of the deceased was not a chaste woman; that he drove her away from his house on that account; that one day he saw Roopchand go into the house of the wife of the deceased; that he seized Roopchand and that on this account the prosecutrix, the wife of the deceased, bore enmity to him; that the witnesses cited for his defence will prove that on the day of the murder he sold fish to the witnesses at "*four gurrees*" of the day; that he is unable to say who wounded the deceased.

The witnesses to the defence can say nothing in support of the defence. They, one and all, deny that the prisoner sold fish to them on the day of the murder.

The *fulwa* of the law officer declares the prisoner liable to "*kissas*" and with this finding I concur. I see no extenuating features in the case; the prisoner has been guilty of a most cruel and premeditated murder and, as his guilt has been clearly established, it is my duty to recommend that he be sentenced to death.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We have carefully considered the papers in this case. We find it clearly proved that the prisoner attacked and repeatedly wounded the deceased with an iron *dao*, or bill-hook, and that those wounds caused his death. The manner in which the prisoner followed the deceased to the Bheel and the repetition and severity of the blows, the character of the instrument, and of the wounds inflicted by it, shew the murderous intent of the prisoner. Nothing is shewn in the defence in mitigation of his crime. We therefore concur with the sessions judge in considering that the prisoner should be sentenced to death, and sentence him accordingly.

We observe that the sessions judge has not sufficiently referred to the provisions of Section 29, Act 11. 1855, in paragraph

8 of his letter of reference. The essential point in that Section is, that the deceased not only *was*, at the time of making the declaration, but "*then thought himself to be in danger of approaching death.*" Moreover, the object of the provision was not in point in this case, as the *deposition* of the deceased was duly taken *on oath* by the magistrate, and was not a mere *declaration*.

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January 24.

Case of  
BINDABUN  
MOOREE  
JEANEE.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

GOVERNMENT AND SHEIKH JOMEER

*versus*

MANULLAH (No. 1,) SHEIKH KAMALDEEN (No. 2,) AND SHEIKH KAMOO (No. 3.)

Mymensingh.

CRIME CHARGED.—Wilful murder of Nobeo Bewah.

1857.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

January 24.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 8th November, 1856.

Case of  
MANULLAH  
and others.

*Remarks by the sessions judge.*—It would appear that the prisoners' cattle having trespassed in a vegetable garden belonging to the deceased, high words passed between them and the deceased lodged a complaint against the prisoners before their zemindar, who fined the prisoners for their carelessness; that in consequence of ill-feeling thus created, the prisoners availed themselves of a favorable opportunity at night on the 2nd Assin last, and attacked the house of the deceased and conveyed her to their house and there severely assaulted her, and the deceased died on the following day, from the effects of the beating she received at the hands of the prisoners.

Prisoners convicted of severely wounding a helpless woman, and causing death; their plea of provocation not proved.

The civil assistant surgeon, who held a *post mortem* examination of the deceased's body, deposes that he found the deceased's death to have been caused by rupture of the liver and spleen; that there were contusions all over the body, more especially on the sides of the chest and belly, and that these contusions and ruptures were apparently the result of violence; that he cannot exactly state what might have been the result of those injuries if the spleen and liver had not been ruptured, but that the deceased was, from the state of her body, which presented a mass of bruises, dreadfully beaten, and that she might have possibly lived two or three hours or even longer.

Before the magistrate, prisoner No. 1, stated that owing to ill-feeling existing between him and the deceased, regarding



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cattle-trespass, the latter came to his house on the night in question and attempted to set fire to his house, and that in consequence he seized and assaulted her, and afterwards conveyed her to his house, and detained her till she was taken to the house of his landlord, Abeed Moonshee, whom he informed of the same. In this court, he also with slight variations repeated his statement before the magistrate, stating that he only gave her a kick on the thigh and a slap on the back, Nos. 2 and 3 denied before the magistrate any participation in the assault, but allowed that their father, No. 1, seized the deceased while attempting to set fire to their house, and detained her until she was taken to the house of their landlord. In this court, they adhered to their denial. No. 2, stated that he was implicated in the matter owing to his father, No. 1, having assaulted the deceased. No. 3, pleaded that since Bhadro last, he has been dangerously ill and that his father detained the deceased in his house as she attempted to set fire to his house.

The law officer finds all the prisoners guilty of culpable homicide, and declares them liable to punishment by *accoobut* ; I concur in this finding.

From the evidence recorded on the trial and the admissions of prisoner, No. 1, and the statements of prisoners, Nos. 2 and 3, before the magistrate, and in this court, I do not entertain the slightest doubt of their guilt, although prisoners Nos. 2 and 3, deny any participation in the assault and endeavour to throw the guilt on prisoner No. 1, their father ; still it has been clearly proved on the evidence of three eye-witnesses\* that the whole

|                          |                                  |
|--------------------------|----------------------------------|
| * No. 1, Noorjan Beebee. | of the prisoners dragged the     |
| „ 2, Sheikh Madoo.       | deceased from her house and      |
| „ 3, Shoodhun Beebee.    | severely assaulted her ; and al- |
|                          | though prisoner No. 1, denies in |

this court that his sons took any part in the assault, still I consider that this statement, has, more than probably, been made with a view to shield his sons from the consequences. The attack on the deceased, a helpless widow, was cowardly and most wanton ; it has been clearly deposed to by the civil assistant surgeon that the deceased met her death by violence, the body on examination presenting a mass of bruises and both the liver and spleen were ruptured, the former of which was in a healthy condition, and this leads me to believe that great force must have been used to cause the rupture. Ill-feeling is said to have existed between the deceased and the prisoners, but I cannot, in the absence of more substantial evidence, arrive at the conclusion that the prisoners actually premeditated *murder*, and that they probably rather wished to revenge themselves for the punishment to which they had been subjected by their landlord at the instance of the deceased. The plea raised by the prisoners of the deceased having come to set fire to their house has not been

proved in evidence. Under the above circumstances, being of opinion that the prisoners are guilty of having assaulted the deceased in a most brutal and cowardly manner, from the effects of which she died, I convict them of aggravated culpable homicide, and consider that any punishment short of fourteen years with labor and irons for such ruffians would not satisfy the ends of justice ; I therefore recommend this punishment for the consideration of the superior Court.

*Remarks by the Nizamut Adawlut.*—(Present : Messrs. G. Loch and H. V. Bayley.) From the evidence for the prosecution there can be no doubt that the deceased met her death from the effects of the severe beating she received from the prisoner. No credit can be attached to their statements, that the deceased was caught by the prisoner, Manullah, in the act of setting fire to his house ; for no reason can be assigned why she should do so. She had been beaten by Manullah's wife, and his cattle had trespassed on her crops, and she had complained to her zemindar, and Manullah had been fined upon that complaint. It was therefore unlikely that she should have a motive to set fire to his house. Discovery too on a moonlight night would be reasonably anticipated, and further, no proof is given in support of these statements. The Court concur with the sessions judge as regards the guilt of all the prisoners ; and convicting them of aggravated culpable homicide of a weak and defenceless woman, sentence them each to fourteen years' imprisonment with labor and irons, in banishment, in jails of separate districts.

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January 24.

Case of  
MANULLAH  
and others.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*

## JADOO MUNDUL CHASSA SUTGOPE.

Hooghly.

1857.

January 28.

Case of  
JADOO  
MUNDUL  
CHASSA  
SUTGOPE.

CRIME CHARGED.—1st count, dacoity on the night of the 5th November, 1853, in the house of Amdoo Mundul of Autneegram, thannah Pandooah, zillah Hooghly; 2nd count, dacoity on the night of the 27th March, 1854, in the house of Kangalee Kolloo of Bhoorkoondah, thannah Umbeeka, zillah Burdwan; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate, under the dacoity commissioner, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 10th November, 1856.

Prisoner convicted and sentenced under Act XXIV. of 1843, on testimony of approver-witnesses, corroborated by independent evidence.

*Remarks by the additional sessions judge.*—The prisoner, Jadoo Mundul Chassa Sutgope, is charged with two specific dacoities, and with having belonged to a gang of dacoits.

No ruling can be given on credibility of evidence, which must in each case depend on circumstances of that case, and on the views of the presiding judges thereon.

The first dacoity was at Autneegram, in the Hooghly zillah, on the night of the 5th November, 1853. The two approvers, who are entered in the calendar as witnesses to the fact, confessed to having been in this dacoity on the 16th December, 1854, and 13th May, 1855, respectively; and they then denounced, as they have now again before me on oath, the prisoner at the bar as an accomplice as well as each other. The incidents of the affair are by no means remarkable; but such as they are, the witnesses have related them consistently throughout. One Radha Haree, now a transported convict for dacoity, confessed to this dacoity, on the 19th July, 1855, and in his confession named the prisoner as having been associated with him in the offence. The prisoner, it will be seen, was arrested long after.

The second dacoity was at Bhoorkoondah, on the 27th March, 1854. There is only the parole evidence of one approver witness (Madhub Haree) to fix this crime on the prisoner. His testimony is corroborated\* by his previous confession of 11th May,

\* Act II. 1855, Section 31.

1855, more than a year before the prisoner's seizure.

Here too there are no remarkable incidents; but there is much evidence, *quantum valeat*, confirmatory of the witness's statements as they affect the prisoner under trial. One Nita Bagdee or Haree confessed to the police to this dacoity, on 29th March, 1854, the next day but one after its occurrence, and denounced, in his confession, both the prisoner and the approver witness. On 28th March, 1854, or the very day after the affair, one

Gobrah also confessed and named the approver and "a Sutgope Mundul," doubtless the prisoner, and on the same day a third person arrested on suspicion the same, one Nuffur Chowkeedar, in the same terms. Lastly, Jadoo Haree spoke of a member of the gang in this dacoity whose name he did not know being "a Sutgope from Alipore," the prisoner being a resident of Alipore, and the approver witness swearing, there was no other Sutgope Mundul with the party but the prisoner.

The approvers declare the prisoner was a regular member of their gangs and also served under Thakoordass, Madub's father, before them in more than a dozen expeditions.

The prisoner's defence is but little more than a simple denial. He has said from the first that the second approver witness Madhub owes him a grudge. He calls, however, witnesses to character only; and of these, one is his uncle, who never heard of any dispute between his nephew and the witness, and is unable to speak to his character. The other two say *he is a well known thief and dacoit*.

Under all the circumstances, I consider it has been quite sufficiently established that prisoner has belonged to a gang of dacoits, and that he should be sentenced to imprisonment with hard labor for life in transportation.

It is necessary before closing this reference that I should offer a few remarks as to the nature of the evidence relied upon for conviction. By English law as well as by the practice in India, the direct evidence of accomplices, except under *very* peculiar circumstances, always requires confirmation, more especially so, as enjoined by the Court of Directors in their despatch of 4th September, 1841, where the said accomplices are professedly of the most abandoned class and character, such as our Bengal dacoits. The confirmatory evidence in this case consists solely of the recorded confessions of accomplices who have never been confronted with the prisoner, but who could have had no possible object in denouncing him falsely. Such evidence is inadmissible in the English courts,\* and I was much blamed for

\* Taylor on Evidence, Vol. I. page 726.  
Archibald's Crim : P. C. page 198.  
Russel on Crimes, II. 864.

† It was a mistake to speak of Zukee (or Jurreb's) "depositions as an approver." They were confessions only.

But I am prepared to shew first, that the English law of evidence has undergone lately and is yearly undergoing such radical changes as to prove its very narrow and bigoted fundamental principles at the time our courts were established; secondly, that the said English law of evidence has never really been extended to this country by any positive law, construction, or Circular Order; thirdly, that there

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Case of  
JADOO  
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receiving it in the case of Anund Roy and two others, decided by the sudder Court in appeal, on 19th July, 1856, in favor of the prisoners.†

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Case of  
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is no *law* of evidence for this country beyond practice and precedents, the preambles to Acts XIX. of 1837, and II. of 1855, notwithstanding; fourthly, that it is both reasonable and fair, as well as the opinion of many modern jurists of eminence, that *every thing* which affects a prisoner *in any way*, whether for or against him, should be produced at his trial, the judge or jury, or judge, deciding what weight and credibility if any, should be attached to it; and *lastly*, that our Nizamut report books *teem* with convictions based on direct evidence, not in itself considered sufficient, but so considered when corroborated or supported by the description of evidence declared by the judgment of the 19th July last, to be *in limine* inadmissible.

I will specify two instances: On 25th April, 1856, Hossein Noonay was convicted of the single dacoity at Kachooa, and of having belonged to a gang of dacoits, and transported for life. Had the Kachooa affair not been brought home to the prisoner, the Court could not, under the precedent of 31st July, 1854, have convicted him on the general count. The proof against this prisoner in this Kachooa case consisted of the direct testimony of one approver witness, and his having been compromised in the confessions of three accomplices, with whom he had never been confronted.

On 26th January, 1856, the Court transported for life, one Anund Ghose Kayet for (amongst others) the dacoity at Chukla. The direct proof was the testimony of one approver witness; while amongst the corroborative evidence in confirmation of this testimony, there was admitted and considered to the prisoner's prejudice the confession of the same Jureb Shikaree with regard to the same affair which was pronounced on the 19th July, inadmissible. I earnestly request the Court to decide at once which rule is to hold good. Until this point is set at rest, several pending commitments must remain untried.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The two witnesses, approvers, depose before the deputy magistrate and the sessions judge to prisoner having been engaged in the "*Autneeegram*" dacoity. One of them deposes to the prisoner having been engaged in the "*Bhoorkoondah*" dacoity. Both depose to prisoner having belonged to a gang of dacoits. These depositions agree with their general confessions of 16th December, 1854 and 11th May, 1855, respectively. The prisoner was not apprehended till 22nd August, 1856. These depositions and confessions are supported as to the "*Autneeegram*" case, by the confession of one Jadoo Haree, of the 19th July, 1855. In all these, the particulars as to the rendezvous, the disposal of the plunder, the parties who joined, and the manner of committing the dacoity, agree; while the statements, at the time, of the parties plundered, and the finding of the broken *pettarahs* and of the arrows,

by the villagers, tally with the narratives given in the above confessions and depositions. We consider these circumstances sufficiently corroborative of the confessions and depositions referred to.

In the "Bhoorkoonda" case, there is the deposition of one witness (Madhub Haree, approver,) only. It is to a certain extent supported by the confession of Nitai or Haree Bagdee, taken the day after the occurrence. Three other persons then apprehended also confessed; two spoke of "a Sutgope Mundul" as one of the dacoits, and one of a "Sutgope from Alipore" (prisoner's residence) while the approver deposes to no other Sutgope, but the prisoner, having been with them. Beyond this, depending entirely on confessions of accomplices, no other independent circumstances are adduced in corroboration.

The prisoner's defence before the magistrate was, that Madhub Haree, witness No. 2, kept pigs and cattle, and spoilt the crops generally, so that *all* the villagers were annoyed with him: and hence a bad feeling existed between that witness and prisoner. At the sessions, prisoner urged only that *his own* crops had been thus spoilt. The defence is in no way proved; though apparently one not difficult to prove if true. Prisoner is stated to be of bad character by his own witnesses.

We convict the prisoner on the *first* and *third* counts; and sentence him to be transported for life.

With reference to the remarks of the officiating additional judge in the concluding paragraphs of his letter of reference, the Court observe that the question involved in them is *not* one of a *point of law*, admitting of a general ruling by the Court; *but* one of the *amount of credibility* and consideration to be accorded to a certain description of *evidence*, i. e. that of *accomplices*. The solution of that question must depend on the view which the presiding judges may take of the various circumstances of *each* particular case, as corroborative, and to what extent, and to a sufficient extent or not, of that evidence; in other words, as the presiding judges have to consider the weight to be allowed to the various circumstances in *each* particular case, in connection with the credibility or consideration to be allowed to such evidence, no general ruling could be made, fixing absolutely the weight to be given to such evidence *per se*, in *all* cases alike.

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Case of  
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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

KISHTO BAGDEE.

Hooghly

1857.

CRIME CHARGED.—1st count, dacoity on the night of the 27th April, 1852, in the house of Thakoordas Banerjee, of Sanny, thannah Gangoor, zillah Burdwan; 2nd count, dacoity on the night of the 27th June, 1852, in the house of Jadoo Das Tantee, of Radhakantpore, thannah Gangoor, zillah Burdwan; 3rd count, dacoity on the night of the 8th January, 1853, in the house of Pearee: nohun Chowdry of Nulsarah, thannah Gangoor, zillah Burdwan; 4th count, having belonged to a gang of dacoits.

February 2.

Case of  
KISHTO BAG-  
DEE.

Prisoner con-  
victed and sen-  
tenced under  
Act XXIV. of  
1843 on testi-  
mony of ap-  
prover witness-  
es, supported  
by independent  
corroborative  
proof. Delay  
in commitment  
to be avoided.

Committing Officer.—Baboo Chunderseeker Roy, deputy magistrate under the dacoity commissioner.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 27th November, 1856.

*Remarks by the additional sessions judge.*—The prisoner, Kishto Bagdee, is charged with three specific dacoities, and with having belonged to a gang of dacoits.

The first dacoity was at Sanny, on the 27th April, 1852. The two approvers, Madhub Haree and Horo Sirdar, were engaged in it, and in their confessions, dated 11th May, and 21st December, 1855, respectively, denounced the prisoner as an accomplice as well as each other. They again before me swear the prisoner was with them in the affair and detail the circumstances which are somewhat remarkable as at first, witness No. 4, met the party on their return, and corroborates in that respect a rather peculiar incident related by the approver Horo.

The second dacoity was at Radhakantpore, on the 27th June, 1852, and all the three approvers entered in the calendar were concerned in it, and denounced the prisoner in their confessions taken down on 11th May, 1855, 15th December, 1855, and 20th September, 1856, respectively. The two first dates are much prior to the prisoner's arrest, but the last subsequent to it. The first approver denounced with the prisoner both his fellow-approvers; and the second approver the same, and besides, one Sreenath Bagdee, to be mentioned again hereafter. The evidence of the third approver, I will not, under the circumstances, take into account against the prisoner, but he too compromised the above Sreenath Bagdee, and the second approver witness, though not the first. All the approvers give



1857. the incidents of the affair before me as they did originally and  
 agreeing with each other. They cannot be called remarkable,  
 February 2. but they were by no means of a very ordinary character.  
 Case of In support of the direct evidence on this count we have as  
 KISHTO BAG- follows: on 20th March, 1855, Sreenath Bagdee, subsequently  
 DER. transported for dacoity, confessed to this Radhakantpore  
 dacoity, and in his confession declared the prisoner and the  
 three witnesses were in it with him. The village chowkeedar  
 deposed on the 28th June, 1852, the very day after the dacoity  
 he had seen this Sreenath, in the act, and one Jadoo Das, the  
 same on the same day. Lastly it will be seen, the gang were  
 really disturbed and had to separate while dividing the plunder  
 as stated by the approver witnesses.

The third dacoity was at Nulsarah, on the 8th January, 1853. But one approver (Jadoo Bagdee,) has compromised the prisoner in this affair, but what he said on 20th September, 1856, he has to-day again repeated without contradiction. Still his confession, having been recorded subsequent to prisoner's arrest, deprives it of much of its weight, in my opinion, as it affects the prisoner. He, however, associated in his confession with the prisoner the name of Sreenath Bagdee who had confessed to it on 21st March, 1855, and denounced as his accomplices the prisoner and this approver witness, being himself shortly after transported.

On this count there is much against the prisoner, besides the somewhat doubtful testimony of the approver Jadoo. On the 9th January 1853, *the day following the dacoity*, a dacoit of the name of Rameshur Hari, who had been arrested on the spot wounded, made a full confession of his guilt, and implicated in it the prisoner, the approver Jadoo, Sreenath Bagdee, Tarachand, and others. Tarachand was at once arrested, confessed and denounced, amongst others, the prisoner under trial. Prisoner could not be found. He had fled and evaded justice. In March, 1855, two years afterwards, Sreenath Bagdee was caught and he too then denounced, amongst other associates in this crime, the prisoner at the bar.

There is no reason why any of these persons should have collusively or falsely compromised the prisoner who was not apprehended till long after. His defence supports this view of the case, for, with the exception of the approver Haroo, he affirms he knew nothing of any of the rest. Haroo, a convicted dacoit, the prisoner admits he was acquainted with, and says he had a dispute with him about a woman, to prove which, he calls no witnesses. The four witnesses he calls *to character* merely say "they know nothing against him."

I convict the prisoner of having belonged to a gang of dacoits, and recommend that he be sentenced to imprisonment for life with hard labor in transportation.

The corroborative evidence in the calendar, *as against the prisoner in particular*, is confined to the denunciation of him in the previous confessions of accomplices with whom he has not been confronted. I am of opinion that such confessions especially when recorded immediately after the event are to a certain extent confirmatory evidence of value; and that it is admissible evidence was declared in the case of Government *versus* Sagur bearer, tried by the Sudder Court on the 28th July, 1856, when the ruling in the previous case of Anund Roy and others, tried on 19th July, 1856 as to the inadmissibility of such evidence, was set aside.

The dacoity commissioner has been required to explain why the prisoner was not called upon for his defence for six months after his arrest.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence of the witnesses (approvers,) to the *Sanny* dacoity is supported by the independent testimony of witness No. 4, a fisherman, as to his meeting the gang on their return from this dacoity, his climbing up a tree from fear of them, and his having his net taken away by the dacoits. The witnesses, Nos. 1 and 2, also mention that the prisoner was able to inform them of the circumstances of the brahmin, whose house was attacked in this dacoity, owing to prisoner's brother having married a resident of the village. The fact of such marriage is admitted by prisoner. The prisoner was named in the general confessions of these witnesses, of the 11th May and 21st December, 1855, i. e. before prisoner's apprehension; and these general confessions agree in detail with their present testimony. The testimony of the witnesses, approvers, as to prisoner's participation in the *Radhakantpore* dacoity agrees with the detail of their general confessions, and is supported by the confession of Sreenath Bagdee, taken *before* these approvers were apprehended; and by the independent evidence of the chowkedar, Nuboy, recorded on the day after the dacoity, i. e. on the 28th June, 1852, as to this chowkedar and villagers being driven off by Sreenath Bagdee and other dacoits, as to the recognition of Sreenath Bagdee by the chowkedar, and his mention of it at the time, and as to the cause and manner of the dacoits being disturbed in the division of the plunder. The prosecutor also at the time stated that he had recognized Sreenath Bagdee. This Sreenath was sentenced to transportation for dacoity. (Vide Nizamut Adawlut Reports, 11th October, 1855.) We sentence the prisoner to transportation for life. We consider the explanation of the Commissioner, as to the cause of the delay in the commitment, sufficient; but think that every exertion should be made, compatible with the due course of justice, to avoid similar delays.

1857.

February 2.

Case of  
KISHTO BAG-  
DEE.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND JAMEER

*versus*

MOTEEOOLLAH.

Tipperah.

1857.

February 2.

Case of  
MOTEEOOL-  
LAH.

CRIME CHARGED.—Wilful murder of Buktar Bajonia.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 6th November, 1856.

*Remarks by the sessions judge.*—The occurrence in which this

Prisoner convicted of wilful and deliberate murder committed seven years before, and sentenced to be hung. The sessions judge suspended the execution owing to certain local petitions, impugning the justice of the sentence. Resolution of the Court on those petitions, declining to alter the sentence, but allowing execution to be suspended to give petitioners opportunity to apply to the Government with reference to Reg. XIV. 1810.

commitment originates took place seven years and five months ago, the prisoner having instantly absconded and successfully concealed himself, until recently, in Calcutta or its vicinity, in spite of a reward of rupees 100 having been offered for his apprehension. The witness, Basir Mahomed, No. 97, meeting him and accidentally in Calcutta at once recognised him and gave the information which led to his capture.

It appears that in June 1849, Hurrkishore, the zemindar of this district, instituted a summary suit for arrears of rent against the prisoner, in consequence of which a warrant of arrest issued which the prisoner and his friends resisted by open violence. The charge as set forth in the calendar is that the prisoner struck the deceased (who accompanied the peon to point out the debtor) a severe blow with the reverse end of a spear, and that death ensued as a consequence of the injury then and there inflicted.

The prisoner pleaded *not guilty*.

His uncle, who prosecuted, was not present when his nephew was wounded, but saw him shortly afterwards and heard from the peon, whom the deceased had accompanied for the purpose of pointing out the prisoner, that the wound was inflicted with a *sang* or short iron spear, in the right side of the chest.

The peon of the collector's court, who attempted the arrest, (Ramnidi Sing, witness No. 86.) deposed that after the prisoner had been rescued by his brother and some other friends, he entered his house and returning with a *sang* or iron spear, wounded the deceased in the breast with its sharp end. The deceased had assisted no further in the attempted arrest than by pointing out the prisoner to the peon as the person to whom the process referred. The distance between the spot where the arrest was attempted and the house from which the prisoner subsequently brought forth the spear was somewhat less than half a *kamee*.

The evidence of the witnesses named in the margin, was to a similar effect. Saw the forcible rescue of the prisoner from the hands of the peon by his brother and some other friends, after which the prisoner entered his house and returning with an iron spear (*sang*) wounded the deceased in the breast and instantly made off. The deceased fell to the ground on the instant of receiving the wound, which caused a considerable effusion of blood, and was carried home. The space between the spot where the prisoner was rescued and the house from which he obtained the spear with which he wounded the deceased was described by the witnesses, Ramnidee Sing peon, collector's office, (No. 86), Backer (No. 87), and Rampersaud Mallee (No. 89), in a very uniform manner. They pointed to precisely the same spot on the outside of my court as representing the distance from the one place to the other, and this was generally allowed to be a trifle less than 1 *kanee*. The witness, Mohurumdy (No. 88) could not recollect precisely from whence the prisoner procured the spear, although when examined in the magistrate's court in 1849, he mentioned its having been brought from a house. It is evident, and the fact is a very important one, that the prisoner had not the spear in his hand when arrested by the peon, but that he brought it from the interior of a house close at hand, and wounded the deceased when violence was no longer necessary for his own release, nor, indeed, had violence ever been necessary as regards the acts of the deceased, whose share in the arrest appears to have been limited to pointing out the prisoner to the collectorate peon, and perhaps calling for *dohai* justice when that official was deforced. The records of the summary suit for arrears of rent are corroborative of the evidence recorded in this court, which is also in close accordance with the testimony of the same witnesses taken by the magistrate in the year 1849. The facts of the case are simple enough in themselves, and are precisely such as the lapse of seven or eight years would not erase from the memories of those who now depose to them.

The evidence proceeds to show the witness Basir Mahomood's casual encounter with the prisoner which led to the apprehension of the latter. It then substantiates the deposition of the wounded man on the 18th of June, four days prior to his decease in which he declared, on solemn affirmation, that the prisoner rushed out of his house and wounded him with a spear in his breast, because he called out *dohai* when the collectorate peon was assaulted and deforced.

The civil assistant surgeon, who gave in 1849 his evidence before the magistrate as to the cause of death, is no longer at the station, or, in fact, in the country. I was therefore unable to take his deposition anew, but the following was the sub-

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stance of his evidence in the court below, and under the circumstances, I conceive it may be received on the present occasion with perfect confidence.

He says that the deceased was admitted into the hospital on the 19th day of June (he was injured on the 14th idem) with "a dangerous wound beneath the right clavicle about an inch and a half in length which wounded the pleura and passed into the cavity of the chest. It was a wound dangerous from its nature, as it was inflicted with great force and the texture was consequently injured. Suppuration is the general consequence of such a wound. It thus assuming the nature of an open wound communicating with one of the most important cavities of the body and it is probable that inflammation will be set up in the lung, or lungs, and death be the consequence."

Dr. Horton concluded his evidence by stating that the wound above referred to, was the primary cause of death, the immediate cause being no doubt the suppuration which ensued. He observed at an earlier stage of his examination that "there might have been a chance of the wound healing if treated when first inflicted, but remaining an open wound so long, inflammation was produced, which was the cause of death."

I may here remark that I cannot discover in any part of the case either in my own court, or, which is more essential as regards the question of the correctness of the calendar, in that of the magistrate, any grounds or reason whatever for the statement made in "the abstract of the examination" that the prisoner struck the deceased "a severe blow" with the "reverse end of a spear." It is on the contrary quite clear from the evidence, taken both by the committing officer and myself, that the prisoner pierced the deceased in the chest with the sharp and pointed edge of a short but very deadly iron spear. There is of course a vast difference in the animus evinced by a blow, however severe, struck with the blunt and comparatively harmless end of a spear, and a wound inflicted in a vital part with its sharp extremity. A person inflicting the latter injury must have been actuated by a far more criminal purpose than need be attributed to one who merely strikes a blow with the blunt end of the same weapon. This error is of sufficient importance to justify the remark that the magistrate ought to have been more careful in recording his grounds of commitment.

The prisoner's defence was that the charge owed its origin to hostility entertained towards him by the zemindar, Hurkishore Roy, and that he had proceeded to Calcutta *before* Bucktiar Bajonia's death occurred. He gave a list of thirty witnesses, but ultimately examined only six.

I am, of course, sensible that an accused individual should have the amplest means afforded him of establishing his innocence. Evidence can do it. But there should be limits to even

a privilege of this nature, and my experience as a sessions judge warrants my remarking that it is often, if not habitually abused by persons committed to take their trial for serious offences. The object appears to be to give needless annoyance (especially at harvest time) to any and every one whom the accused, considers inimical to him, and the effect is not only to harass such persons (whose evidence is ultimately declined) but to involve the Government in considerable and needless expense in the form of subsistence-money. In the present instance the prisoner declined examining more than six of the thirty witnesses in attendance, the whole of whom are ryots of the zemindar with whom he professes to be on bad terms. In a trial held by me immediately before the present, the prisoners summoned sixty-four witnesses and ultimately examined only twenty-four. In that instance the probable object was to harass the ryots of the talookdars who were at variance with each other. In the present case, it is obvious that the prisoner could establish his defence, supposing it to be a true one, as well and satisfactorily by four or five witnesses as by thirty. I think the committing officer would exercise a wise discretion, if, in summoning witnesses named by prisoners whom he is about to commit, he were to limit the number within reasonable bounds.

The witnesses called by the prisoner established nothing exculpatory of him and in fact rather strengthened than weakened the case for the prosecution.

There seems to have been a very groundless imputation made against Hurkishore Rai in 1849, of having caused the death of Bucktiar by improper treatment of the wound. This charge seems to have been purely malicious and to be entitled to no credit whatever.

The Mahomedan law officer convicts the prisoner of the culpable homicide of the deceased, and pronounces him liable to *acoolut*.

I am of opinion, for the following reasons, that the crime proved must be considered as wilful murder.

The prisoner in his defence in the magistrate's court described the deceased as being his servant at the very time when the summary suit was instituted and process of arrest taken out against him, and this statement is in a great degree confirmed by the evidence of the witness No. 87 who deposed that the deceased had been in the prisoner's employ a year before his death. It appears to me that the prisoner was especially exasperated at the deceased having assisted the collectorate peon in effecting or rather in attempting the arrest, his indignation being enhanced by the fact of the domestic relation existing between them. The evidence renders it clear, in my opinion, that the prisoner's brothers and friends had succeeded in completing his rescue from the peadah's hands before he rushed into his house

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and returning with an iron spear stabbed the deceased in the breast. The latter, it is to be observed, had given the peadah no aid beyond indicating the prisoner to him, nor had interfered beyond making the customary exclamation of *dohai* when the peadah was deforced. In selecting him, therefore, instead of the peadah, as the object of his violence there must have existed, on the prisoner's part, some latent malicious feeling, and what that feeling was, and to what it owed its origin, I think I have shown correctly. Whether, however, his guilt amount to wilful murder, or is limited to culpable homicide, his long and successful evasions is a collateral point strongly in favor of the conclusion that the deceased met his death at the prisoner's hands.

Dr. Horton's opinion that the deceased might possibly have recovered, if medical aid had been earlier resorted to, does not affect the prisoner's criminality to any material extent. A man wounding another in such a part of the body, as the chest, with such a weapon as an iron spear, cannot claim to benefit by the bare possibility that resort to timely medical assistance might have saved his victim.

I am of opinion therefore that the prisoner has committed wilful murder and rendered himself liable to a sentence of imprisonment for life with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The facts clearly proved in evidence are these;—Ramuidee, a Collectorate peon, had charge of a *dustuck* under Regulation VII. 1799, to be executed upon the prisoner. The agent of the landholder, on whose behalf the process was served, desired the deceased, then employed as a servant at the landholder's cutcherry, to go with the peon, and point out the defaulter, i. e. the prisoner. The deceased did so. The peon proceeded to take up, and was taking up the defaulter, (prisoner) when the relatives of the prisoner assaulted the peon, and caused the release of the prisoner. The deceased stood by, and called "*dohai*." On being thus rescued, the prisoner at once ran to his house, a distance of forty to forty-five cubits: and took from it a *sang* (described by the sessions judge as a "short, but very deadly iron spear,") and rushing back the same distance to where the deceased was standing, struck the blade end into his chest. (It does not appear that it was the reverse end as supposed by the magistrate.) The deceased dropped from the blow, and was conveyed away, first to a Moodee's and then home. The occurrence was on the 12th June; deceased was admitted into hospital on the 19th, and died on the 21st. From the medical testimony taken before the magistrate, it is clear that the primary cause of death was the wound; and that, under any circumstances, it was likely to be a dangerous wound; and further, that from the appearances presented internally, it must have been inflicted with great force. In the meantime

the prisoner, after having struck the blow, took the *sang* with him, and fled; and was only apprehended seven years after. The defence is an *alibi*, but it is not substantiated. There is nothing to shew that the process was otherwise than legal and right; or that on serving it, there was the slightest provocation properly so-called, on the part either of the peon, or of the deceased. The witnesses assert the motive of the crime to have been the fact of deceased pointing out the prisoner as the defaulter, and the deceased crying out "*dohai*" when the peon was assaulted. One witness, Muhunaroodeen, states before the judge that a year before deceased had been prisoner's servant, employed to cut grass for prisoner's cattle; but the prisoner himself cannot state at what time deceased was his servant.

The fact of the prisoner being guilty of wilful murder is in our opinion proved beyond doubt.

The question remains whether, by the Regulations and the practice of the Nizamut Adawlut, a capital sentence should be passed; or the prisoner be imprisoned for life, as recommended by the sessions judge. The sessions judge does not give any reasons for this recommendation.

The Regulation law (Section 3, Regulation XIV. 1810,) admits a discretion in the Nizamut Adawlut, to mitigate the capital punishment "when it may appear just and proper according to the evidence and circumstances of the case."

The precedents of the Nizamut Adawlut shew the practice to be, that a capital sentence is passed only when malicious intent to kill is evident; or very peculiar or aggravated circumstances are to be found.

We consider that in this case, where there was no provocation; where the prisoner was actually free from the peon, when he turned again to fetch the spear from his home, having a distance of forty cubits to traverse to get it, and forty again to reach the deceased, after having obtained the spear; where the character of the weapon was obviously dangerous to life; where it was struck with great force, at the chest, a known vital part, malicious intent to kill, and recklessness of consequences, cannot be said

NOTE. After the above remarks had been recorded by the Court the following *letter* No. 58, dated the 18th February, 1857, was received from the *Sessions Judge* of Tipperah.

In obedience to the orders conveyed in your letter without number, dated the 2nd instant, and transmitting an extract from the proceedings of the Court of the same date, sentencing the prisoner Motecoolah, charged with the wilful murder of Buktar Banjanea, to be hanged by the neck, I issued my warrant to the magistrate of Tipperah, directing him to carry out the sentence on the 19th instant.

I feel that I am undertaking a great responsibility and incurring the risk of serious blame in postponing the execution of the sentence passed on the prisoner until I can receive further instructions from the Court,

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to have been wanting. • We consider too, that while no provocation is shewn on the one hand to warrant a mitigation, there

But so strong and universal is the local feeling, that further enquiry would demonstrate that the case against the prisoner has been seriously misstated, that I have, at length determined on delaying execution of the sentence until the petitions which accompany this letter have been considered by the Court. The petitioners state, and such is the universal present history of the case, that the prisoner was attacked in his own house, and that the case is devoid of the circumstances which, according to the evidence, render it one of wilful murder. There can be no doubt that these statements are, as I have recorded on the reverse of both petitions, opposed to the evidence as it stands on record, but public opinion is so strong as to that evidence being exaggerated and in many respects wholly false, that I must pray the Court to forgive me for postponing execution of their orders until I hear whether it is their pleasure that another enquiry should be instituted or not.

I have requested the magistrate to inform the prisoner that execution of his sentence is merely postponed, and to caution him against entertaining hopes which may ultimately prove to be without foundation.

May I beg that this letter may be quickly laid before the Court.

From the *Sessions Judge of Tipperah*, to the register of the Nizamut Adawlut No. 64, dated the 21st February, 1857.

In continuation of my letter No. 58, dated the 18th instant, I have the honor to forward in original a letter from the magistrate of Tipperah, accompanied by a communication from Mr. Dunne, a resident of that part of the district to which the condemned man, Motecollah belongs. A similar letter has also been addressed to me by several of the most respectable residents of the place, European and native accompanied by another letter from the same gentleman.

May I beg you to lay them before the judges who presided at Motecollah's trial.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley) No. 175, dated the 13th March, 1857.

Read a letter No. 58, dated the 18th ultimo, from the Sessions Judge of Tipperah, reporting that he has postponed the execution of the capital sentence passed by the Court, on the 2nd idem, upon the prisoner Motecollah, and the following enclosures—

Petition from Nund Chunder and others, dated the 16th February, 1857.

Petition from Lall Mahomed and Sheikh Odoo, dated the 18th February with the remarks recorded on them by the sessions judge, dated the 16th and 18th February, 1857.

Letter from Mr. Henry Roe to the sessions judge, dated 18th February, 1857.

Read a letter No. 64, dated the 21st ultimo from the sessions judge of Tipperah, submitting in continuation of his letter No. 58 of the 18th ultimo the following papers.

Letter from magistrate to sessions judge No. 42, dated the 21st February, 1857.

Letter from Mr. Dunne to the magistrate, dated 19th February, 1857.

Letter from Mr. Dunne to Mr. Campbell, dated 19th February, 1857.

Letter from Mr. Henry Roe and others to the judge of Tipperah, dated 21st February, 1857.

The Court have to remark, in the first place, that the letter of the 21st February above recorded, reached them on the afternoon of the 25th, but that as the letter of the 18th February referred to in that of the 21st

are on the other hand the very aggravated and peculiar circumstances that the deceased was performing a duty which he was

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was stated as the main communication of which that of the 21st was a continuation, they were constrained to await its receipt. They first received it on the 4th of March.

The judgment above recorded, i. e. by this Court on the 2nd February, will shew that the law officer convicted the prisoner of culpable homicide, and the sessions judge of wilful murder. This Court concurred with the sessions judge. This Court and the sessions judge both recorded that they had no doubt of the guilt of the prisoner. This Court sentenced him to be hanged, after a very careful consideration of the case, and for the reasons given in the preceding judgment.

The letter of the sessions judge, of the 18th February, shews that he deferred the execution because "so strong and universal is the local feeling that further enquiry would demonstrate that the case against the prisoner has been seriously misstated." The sessions judge adds that he forwards two petitions to the above effect, but that "the statements in them are opposed to the evidence as it stands on the record, but public opinion is so strong as to that evidence being exaggerated, and in many respects wholly false," that he stayed the execution pending receipt of orders from this Court, whether "another enquiry should be instituted."

The Court will remark on this matter *that they are bound to give judgment on the recorded evidence before them*. They did so; and it can only be in cases where some actual facts are shewn distinctly *demonstrating that record to be false, or the judgment to be against the record*, that execution of the sentence of the Court can be stayed by it, *judicially*.

It is *admitted* by the sessions judge and by the petitioners that the judgment of this Court, as well as that of the sessions judge and law officer, are *not against the record*.

It remains to be seen whether it has been distinctly demonstrated that the record is false.

The petition of Lall Mahomed and Sheikh Odo, state 1stly, that Mohndrooddeen, witness No. 88, on the 6th Phalgun last, admitted at a *zaful* that he had deposed falsely through fear of Baboo Hurkishore Roy; 2ndly, that if the depositions of neighbours and respectable people were taken, the real facts of the case will be brought to light; 3rdly, that Baddoon, Mohndrooddeen and the deceased Buktar and others were *laltials* of the above Baboo, attacked prisoner's house, and endeavoured to compel his appearance by thrusting pointed bamboos through the fence, and then sent in Buktar; who was then wounded; 4thly, that the case was carried on *ex parte*.

The petition of Henry Roc, E. Lecollier and others states that "as far as their knowledge extends" the facts are 1stly, that Mooteoolah has opposed the Baboo Hurkishore Roy in several cases, and therefore the Regulation VII. suit was brought; 2ndly, that the peon was favorably disposed to the Baboo's interests from having been known to him when he was a deputy collector; 3rdly, that twenty or twenty-five *laltials* accompanied the peon and attacked the house and inner apartments; 4thly, that *Moteoolah* closed the door of the house and fled; 5thly, that Basun, Muhndrooddeen and others forcibly pushed Buktar into the house; 6thly, that Bukhtar was wounded, but whether by prisoner, or a woman, or the sharp bamboos of the house is not clear; 7thly, that a *shang* would have made a far worse wound and caused more immediate death; 8thly, that the doctor's evidence shews that if the deceased had at once gone into hospital he would have recovered; 9thly, that the witnesses for the prosecution are now, as *laltials* of the Baboo, in jail; 10thly, that the real facts were stated

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by prisoner's own brother at the time, but that he has been bought over since; 11thly, that as prisoner's house was attacked he could not be liable to death, as he acted in self-defence; 12thly, that the enquiry was an *ex parte* one; that the prisoner did not know the law and practices of courts, and was the victim of the desire of promotion by the police, and conspiracy of others; lastly, that a retrial of the case will bring the truth to light.

None of these statements affect the principle before laid down that some actual fact must be shewn distinctly demonstrating the record to be false:—and this would of itself, prevent the Court interfering.

But in order to shew the petitioners that their petitions have had every consideration compatible with the law, and the rules of this Court, the Court have reperused the papers of the trial, and cannot conscientiously come to any other decision on the recorded evidence by which they are bound to give judgment than that of 2nd February last.

The Court have also reviewed each statement in the petitions; and they have to observe, *firstly*, that even laying aside altogether the evidence of Mohmrooddeen (which, however, could not be done on an extra judicial statement,) they can come to no other conclusion than they did on the rest of the evidence, which is clear, full, and consistent, there being no less than four eye-witnesses, exclusive of Mohmrooddeen and the deceased, to the distinct fact that the prisoner with a *sangh* struck the blow of which deceased died.

*Secondly*. That the prisoner himself pleaded an *alibi*, whereas the petitioners admit his presence at the time.

*Thirdly*. That a woman or some one else, or a bamboo by accident having caused the wound is not shewn as an actual fact distinctly demonstrating the record to be false, which would warrant retrial, and it is directly opposed to that record.

*Fourthly*. There is nothing to shew that the peon, Ramnidli from being merely known to Baboo Hurkishore Roy, when he was a deputy collector, should swear falsely to the fact of prisoner striking the deceased.

*Fifthly*. The deceased Buktar's evidence was taken by the magistrate in hospital the day before his death, and at the police the day after the occurrence. There is no difference, or inconsistency, or trace of enmity in it, or anything but a plain statement of facts. The deceased distinctly swore that Moteecollah prisoner struck the blow which wounded him, and did so with a *sangh*.

*Sixthly*. The evidence taken in 1849, was repeated in 1856, the prisoner having absconded for the whole of that interval. If the main evidence, given in the first mentioned year, and detailed in our judgment was false, the opportunity could not be wanting, when it was retaken in the last mentioned year for the prisoner and his friends to take steps to shew it to be so. But this was not done or attempted. Prisoner's own brother had, it is stated, petitioned after the first trial in 1849, to say the evidence was false. No better opportunity could be afforded for proceeding to shew it to be so, than the trial in 1856, but no such step was taken. Prisoner had a *vakeel*. It is urged that prisoner was ignorant of the laws and practice of the courts, yet the same petition in which this is urged, states that he has brought cases in the courts against Baboo Hurkishore Roy. Moreover from the moment of the conviction by the sessions judge and law officer in November, 1856, till now, when sentence has issued, not one step has been taken to shew the innocence of the prisoner. As to the trial being *ex parte*, the Court observe that the prisoner called thirty witnesses, and only examined six.

We convict the prisoner of wilful murder, and seeing, no sufficient mitigating circumstances, sentence him to suffer death.

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*Seventhly.* The plea of self-defence is quite inconsistent with the plea of *alibi*; and the evidence on the record shews distinctly, as is stated in our judgment, that it was wilful murder.

*Eighthly.* As to the wound being not that likely to be made by a *sangh*, the Court observe that the deceased, and each eye-witness, termed it a *sangh*; and the sessions judge's letter described it in the exact words used in the judgment of this Court. Further, the medical testimony was to the effect that the wound was inflicted by a weapon of the character of a *sangh*. The words of that testimony also were used in this Court's judgment. Nor did the civil surgeon state that recovery was to be expected. On that subject also this Court's judgment records the terms of the civil surgeon's testimony.

Since the above paragraphs were written, the Court have received the sessions judge's letter of the 4th March, No. 80, forwarding copies of the original petitions above received; also a further petition from ten residents of the prisoner's village; and a note of the 3rd March from Mr. Roe, tendering his testimony as one holding farms contiguous to the locality, and therefore well-acquainted with the facts of the case.

The petition of the ten villagers contains nothing which has not been above reviewed; and Mr. Roe's note shews no distinct fact to prove the record, on which the judgment of this and the sessions courts were based, to be false. Indeed, if, of his own knowledge of the occurrence, Mr. Roe could have deposed to the real facts being other than those which have been deposed to by the witnesses for the prosecution, it is most extraordinary that either on the trial in 1849, or intermediately up to the trial in 1856, or since then to this 3rd of March, he has not done so.

The Court therefore cannot see in these later papers grounds for altering their views, as stated above on the former papers.

Under these circumstances the Court, having no judicial grounds to do so, cannot alter their judgment in this case.

But the Court is unwilling to interfere at once in such a case as this with the respite already accorded by the sessions judge because the doing so would have the effect of preventing the petitioners having resort to the means left to them by law of applying to Government under Section 6, Regulation XIV. 1810, and destroy the prerogative therein provided of mitigation or retrial, on grounds of public policy.

The prisoner should be distinctly informed that this Court cannot alter the sentence, upon the petitions and correspondence above recorded; and should be warned not to hope for its alteration at all.

Copies of the judgment of the Court dated 2nd February and of this Resolution are to be furnished to the petitioners.

Copies of the papers noted in the margin\* have been forwarded to the Secretary to the Government of Bengal direct, in order to save time, should a reference be made to Government under the provisions of Section 6, Regulation XIV. 1810.

\* Sessions judge's letter of reference 6th November, 1856.

This Court's judgment 2nd February.

Copies of all the correspondence and of translates of petitions and copies of judge's orders thereon.

Copy of this resolution.

Copy of this Resolution is to be forwarded for the information and guidance of the sessions judge, who will report the measures which may be adopted by himself and the petitioners

with regard to the case, and will allow no delay in their being adopted.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT, JOBRAJ ROY AND OTHERS

*versus*

Bhaugulpore.

SHEWDYAL SINGH.

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SINGH.Prisoner convicted, on sufficient proof of identity, and of active participation. Plea of *alibi* rejected.

CRIME CHARGED.—1st count, riot in which Nirput was killed and Inderjeet Singh, Burhma Roy, Thummun Roy and Jobraj severely wounded; 2nd count, having ordered and caused the above riot.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 24th October, 1856.

*Remarks by the officiating sessions judge.*—The present case was tried with the aid of a jury\* at Monghyr, on the 23rd and 24th October, 1856. The majority of the witnesses from Nos. 1 to 14, for the prosecution, declare that they identified the

prisoner amongst the rioters, he with Hurdial (sentenced to fourteen years' imprisonment) ordered them to attack the opposite party, which they did, and the riot terminated in the murder of Nirput Singh. The witnesses gave their evidence in this court in such a decided manner (with the exception of No. 10, who has, I consider, committed perjury evidently with the object of defeating the ends of justice) that I place full reliance on their testimony, and there is every reason to believe, that the prisoner was present, and with his associate, Hurdial, instigated the disturbance, which led to the fatal catastrophe detailed by the witnesses.

The prisoner pleads an *alibi* similar to that set up by Hurdial of his being at Monghyr, the day of the murder, and remained there transacting business in the sudder ameen's office, which plea has already been rejected by the court. Witnesses

from Nos. 16 to 33,† are produced to substantiate the allegations. I place little confidence

in their testimony, for it appears, that mouza Wulleepore is only ten *coss* from Monghyr, and it is not impossible for the prisoner to have appeared at that station as described, after the riot terminated, and in support of this representation, I would bring to the court's notice, the evidence of witnesses Nos. 19 and 31, who declare, that he, the former, walked into Monghyr, a distance of twenty-two *coss*, in two days, arrived on the 20th

† Nos. 22, 29 and 32, being absent.

Magh, 1260, remained there the 21st and left on the 22nd Idem. In like manner the prisoner might with facility have accomplished ten *coss* without even having recourse to a conveyance. Another circumstance, which greatly invalidates the prisoner's statement, is the fact, that he was summoned, on the 7th March, 1853, and it was not until his property was attached, and seeing that he could not elude the vigilance of the police, that he gave himself up three years after the occurrence, it is natural to presume that had his plea been correct, he would not have evaded the ends of justice for so long a period, the cause of which is left totally unexplained.

The jury return a verdict of *not guilty*; in this opinion I do not concur, and would recommend that the prisoner be sentenced to fourteen years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner Shewdyal Singh, *son of Boonyad Singh*, is charged with instigating and being concerned in a riot attended with homicide, which occurred in 1853. Several parties were convicted and sentenced by this Court to various periods of imprisonment. (Nizamut Adawlut Reports May, 1853, page 680.) Two or more persons of the name of Shewdyal Singh were mentioned by the witnesses for the prosecution, one of whom was called Shewdyal Singh, *son of Boonyad Singh*. Another Shewdyal Singh, *son of Surbajeet Singh*, has already been convicted. (N. A. R. before cited.) The only question for consideration is, the identity of this prisoner with the Shewdyal Singh stated by the witnesses to have been active in giving orders to the rioters. The prisoner pleads an *alibi*, stating that on the day of the riot, (21st Magh, 1260, F. S. or 15th February, 1853,) he was at Monghyr, where he had gone, on 17th Maugh, and that he executed and registered a deed of sale, on 21st Maugh; and also in person filed a *razeenamah* and *safeenamah* in a suit in the sudder ameen's court, in which Boli Singh was the plaintiff. He urges, further, that the prosecutors, who owe him money, have ill-will towards him, and have included his name in the charge in hopes of getting rid of their debts. The prisoner's counsel urges; firstly, that the fact of his client being concerned in the riot is not proved, as the evidence for the prosecution is defective on the point of identity, while the *alibi* pleaded is proven by the documentary and oral evidence produced for the defence; secondly, the counsel refers to the depositions of the prosecutors Gopal and Agurjeet, made to the darogah, who stated that they heard of the riot from Bilas Roy, but that, on reference to his deposition, no mention will be found of Shewdyal's name; further, that the other two prosecutors, Burmah and Jobraj, make no mention of his name throughout; thirdly, that of the witnesses who now profess to identify the prisoner, Mookhram No. 1, on being asked by the Judge to

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which Shewdya! he referred in his deposition taken before the magistrate, said, he could not tell; while Modelall No. 2, as is evident from the question put to him, did not mention the prisoner's name when previously examined by the Judge at the trial; and though Gourdya! No. 3, stated that Shewdya! Singh, "*not present*" was also concerned, the words "*not present*" have been interpolated to criminate his clients; fourthly, that Deela Roy, contrary to the depositions of all the other witnesses, states that Shewdya! had a stick in his hand.

On reference to the record, we find that the prosecutor Gopal Singh, brother of the murdered man, Nirput Singh, distinctly charges Shewdya! Singh, *son of Boonyad Singh*, with having been engaged in the riot; he also makes mention of other parties bearing the name of Shewdya!, as also concerned; and he gained his information from several ryots, and not from Bilas Roy only. The absence of the accused's name from the depositions of Burmah and Jobraj, who were early wounded, and carried off by the rioters, is not sufficient to invalidate the charge against the prisoner. Their depositions refer almost entirely to what occurred to themselves, and specify the name of a few only of the rioters, from those who more immediately attacked them; while Indurjeet, another wounded man, also carried off by the rioters, and several witnesses, mention one or more Shewdyals as being present; and some of them distinctly assert that Shewdya! Singh, *son of Boonyad Singh*, gave the order for attack. It is evident too, from the darogah's report and all the proceedings, that not only Shewdya! Singh son of Surubjeet Singh then under trial and convicted, but also another Shewdya! Singh, *not then apprehended and a leader in the riot*, was concerned, and the prisoner has been identified by the witnesses for the prosecution as *the* Shewdya! in question. As regards the objections offered by the prisoner's counsel to the evidence of certain witnesses for the prosecution, it may be observed, that Mookhram after having identified the prisoner as the party engaged in the riot, was asked by the Judge to which Shewdya! he referred in his deposition taken before the magistrate. He answered: "I cannot tell." The witness apparently did not understand the object of the question, and could not remember his former statement made three years previously. It is true that the witness Modelal omitted the name of Shewdya! Singh in his evidence at the trial before the sessions judge. He did not even point out Shewdya! (son of Surubjeet) then present; but in his evidence before the magistrate he distinctly deposes to *a* Shewdya! instigating the riot; and had the prisoner of that name, then under trial, been the party, he would naturally have pointed him out. The omission of Shewdya!'s name in his former examination before the sessions judge does not therefore affect the credibility of the evi-

dence he has now given ; and the words "*ghair hasir*," said to have been inserted in Gordyal's deposition on purpose to criminate the prisoner under trial, though written above the line, are attested by the magistrate's signature as an integral portion of the deposition. The discrepancy objected to in Deela Roy's evidence need not be further noticed.

With regard to the plea of *alibi*, we think that even if so much of the plea as sets forth that the prisoner was at Monghyr on the day of the riot, and in person filed a deed for registration in the register's office, and a deed of compromise in the sudder ameen's court, be admitted, the fact might have been so without at all exonerating the prisoner from the charge. A similar plea was set up by the prisoner Hurdial Singh, when on his trial in 1853, and was overruled by the Court in the same way. In the present instance, we find that the riot took place in the morning of the 15th February, and the deed of sale, as appears from the Persian certificate, was not *presented* in the register's office till 4 p. m. of that day ; the deed itself was *not registered* till the same hour on the 16th February, i. e. 22nd Magh ; and the witnesses (*vakeels*) who depose to the *razeenamah* and *safeenamah* having been given in by the prisoner in person on 21st Magh, fix the time at about 4 p. m. As Monghyr is only ten *coss* from the place where the riot occurred, and Shewdial from the statements of the wounded men carried off by the rioters, and of the witnesses who went to mouza Wuleepore, does not appear again there, it is not improbable that if he started for Monghyr without delay, a distance easily got over by a good walker in a few hours, he might actually have been there on 21st Magh. In the face of these circumstances, and the clear and direct evidence for the prosecution, we cannot prefer the vague testimony of the witnesses to the *alibi*. Lastly, as regards the plea of enmity on account of loans made to the prosecutors and their relations, no proof has been advanced to substantiate it. We therefore reject the petition of the prisoner ; and considering him guilty of the charges, sentence him, as proposed by the sessions judge, to fourteen years' imprisonment with labor and irons.

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## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND KANCHUNI BEWAH

*versus*

Rajshahye.

MOOLÉE MUNDUL.

1857. CRIME CHARGED.—Wilful murder of his wife, Protima Awrut.

February 2. Committing Officer.—Mr. C. E. Chapman, officiating magistrate of Rajshahye.

CASE OF  
MOOLÉE  
MUNDUL. Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye, on the 20th November, 1856.

*Remarks by the officiating sessions judge.*—The prisoner is indicted for the wilful murder of his wife, Protima, by striking her repeated blows of a bamboo stick, two of which blows, on the right and left sides of the head, respectively, fractured the skull and caused death.

An old widow woman, named Kewa, deposes that on going into her neighbour's, the prisoner's, house to get a light, she saw the prisoner take his wife by the hair and afterwards struck once on the back and twice on the head with a bamboo *lattee* of moderate size, which was produced in court and identified; that the wife, Protima, fell, on receiving the blow on her back, after which the blows on her head were inflicted, she does not know what had previously taken place. She remonstrated with the prisoner, and afterwards ran away.

*Felée*, the prisoner's mother, a very aged woman, who was lying ill of fever at the time this occurred, is produced as the second witness to the fact, between, however, the age and infirmity of this witness, and her natural reluctance to testify against her son, it was found impracticable to obtain any evidence from her.

The prisoner, it appears, confessed before the mofussil police that he had been provoked by his wife's slowness in giving him a drink of water, and had abused her, which she returned by opprobrious language, and that unable to bear the provocation, he had struck her with the bamboo stick, which he had brought with him from the fields, one blow on the back and two others "he does not recollect where," that he then went out, and returning presently found his wife lying with her head broken. Shortly after which she died.

This confession has not been legally proved; the two witnesses who were called for that purpose having deposed that the prisoner admitted, in their presence, having struck the deceased several blows, but that they had no recollection of the details

recorded in the confession ; in fact they declare that " the darogah did not put so many questions " They confirm the leading admission, however, and they state distinctly that the prisoner made that admission quite of his own accord.

The acting darogah was called by my direction, and deposed to the fact of the confession being entirely taken down by him, and as there is no ground for supposing, and indeed no allegation, that undue means were used to obtain the confession, I consider the substance of it well proved, though I have not admitted the document on the record of this court.

Before the magistrate, the prisoner materially altered his statement, alleging that he had been angry with his wife, for absence from the house when he came home ; that they had a quarrel, and that he struck her with his staff, she ran off, and he followed and struck her again in the loins, she again ran away, but was tripped up by her clothes and fell to some distance ; that after this she got up, handed him a *chillum*, and then said that she could not live from his ill-usage of her, and that she would destroy herself and left the house ; that shortly afterwards on coming into the house, he found her lying on her back with her head broken and dying, from which statement he apparently wishes to have it inferred that the deceased by some means inflicted the wound on her own head and destroyed herself. The utter improbability and absurdity of this statement requires no comment.

The *sooruthal* proves the appearances of the body with six different injuries, one on the temple, two others on the head, one on the shoulder, one on the side and the other on the leg.

The civil surgeon deposes that the deceased lost her life from the effects of two wounds on the head, fracturing the skull and rupturing or bursting open the sutures which connect the right parietal and the occipital bones ; these wounds, he thinks, were probably inflicted by blows of a *lattee*. He had previously informed the magistrate that they might have been inflicted with a *dao*, which discrepancy he explains by stating that he was in the first instance given to understand that a *dao* had been the fatal weapon, and by the observation that in many cases within his knowledge of blows from a *lattee* the fracture and, as it was, the cut has been so clear as not to be distinguishable from a wound with a *dao*. I think the explanation satisfactory.

It was also proved that there was blood on the prisoner's clothes when he was apprehended, the clothes were sent in by the police and produced on the trial.

The prisoner in his defence declares that he did not beat his wife ; that the only witness to the fact is the old woman *Kewa* with whom he has a quarrel about some plantain trees.

His three witnesses, however, though evidently favorable to him, knew nothing of any such quarrel, one of them, his own

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brother, *Hady Sheik*, I questioned repeatedly, almost putting the words into his mouth, but even he could not say there was any quarrel, nor had the old woman's evidence the *least* taint of animosity.

The law officer declares the prisoner convicted upon *violent presumption* of the wilful murder of deceased, and liable to exemplary punishment.

In this finding, I concur, so far as to be of opinion that the prisoner in a fit of passion assaulted and beat his wife, the deceased, in such a manner as to cause her death almost immediately, an act undoubtedly amounting to wilful murder, of which I would convict him accordingly.

I do not think, however, it is a case for capital punishment, the evidence to the fact is not very strong, the conviction must rest chiefly upon the prisoner's confessions and therefore some little allowance must be made for the provocation which he alleges, for the unhappy state of brutal feeling which exists among the lower class of Mussulmans especially regarding the status of wives, the degree in which it is regarded as a crime in them to resist or speak disrespectfully to their husbands, and the right of violent correction so commonly believed to exist. I am satisfied that the prisoner never intended to take away the life of the deceased, and although I regard the act which he committed as brutal and reckless in the extreme, it appears to me that the considerations, I have above mentioned, may be sufficient to bar the penalty of death.

I would therefore recommend a sentence of imprisonment in transportation for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The confessions of the prisoner before the police and magistrate are shewn to have been freely and voluntarily made; and are, in our opinion, sufficiently attested. The witnesses distinctly state that the prisoner confessed to having three times struck his wife about the head with a stick. These confessions and the evidence of witnesses Nos. 1 and 2 shew that the prisoner, annoyed at some delay in receiving from his wife water to drink, and after mutual abuse, struck her first on the back, and then on the head; and, after that witness No. 1, got the stick from him, but prisoner recovered it; and inflicted another blow on the head. The evidence of the civil surgeon shews that deceased died very shortly after from effect of the blows, which had fallen on the sutures of the skull, fractured it, and caused effusion on the brain. The prisoner's defence before the sessions is in no way substantiated. The tenor of the evidence, and the character of the instrument described as a *nuree*, or stick made of bamboo "of moderate size," militate against a presumption that there was any malicious, or other intent to kill. Still the repetition of the blows aggravates the

guilt of the prisoner. The sessions judge has recommended a sentence of imprisonment for life. We consider that with reference to the character of the instrument and the absence of any intent to kill, justice will be satisfied by a sentence of fourteen years' imprisonment, for aggravated culpable homicide.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

BUSHEEROODDEEN CHOWKEEDAR (No. 19,) TEE-TOO ALIAS BISSUMBHUR (No. 20,) BERAJDEE SHEIKH (No. 21,) SHEIKH MEAJHAN (No. 22,) KALLY KHAN (No. 23,) SHEIKH KASSIMOODEEN (No. 24,) NEEMCHAND MOZOOMDAR\* (No. 25,) SHOMA ALIAS SHOMOSHDEE MUSSULMAN (No. 26,) AND TOPHAN MOLLAH (No. 27.)

Hooghly.

CRIME CHARGED.—1st count, Nos. 21, 23, 24, 26 and 27, dacoity, on the night of the 10th May, 1856, in the house of Bhogoban Chatterjeeah of Sunhattee, thannah Nowabad, zillah Jessore; 2nd count, Nos. 19 to 26, dacoity on the night of the 4th July, 1856, in the house of Gowreekant Roy of Azgattee, thannah Nowabad, zillah Jessore; 3rd count, Nos. 21, 23, 24, 26 and 27, having unlawfully and knowingly received property stolen in the dacoity charged in count 1; 4th count, against all the prisoners, having belonged to a gang of dacoits.

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Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 27th October, 1856.

*Remarks by the additional sessions judge.*—Prisoner No. 19, is charged with the dacoity at Azgattee, on the night of the 4th July, 1856, and with having belonged to a gang of dacoits. That this dacoity, occurred as represented, has been proved by the evidence of the owner of the house and another witness a neighbour of his. It was reported at the thannah the following day. The property carried off consisted of gold and silver ornaments partly from an idol and partly belonging to female members of Gowreekant's family. The owner of the house, in his statement to the police the day after the dacoity, said the only names he could give as those of persons he suspected from

Prisoners convicted and sentenced under Act XXIV. of 1843, on their own confessions, tallying with the confessions of others, and corroborated by independent evidence.

\* Acquitted by the sessions judge.

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their bad character was prisoner No. 22, and some others not under trial. On the day following, the deputy magistrate of Koolua, arrived on the spot, and Gowreekant Roy could tell him nothing beyond what he had previously told to the police mohurrir. Subsequently, however, Gowreekant communicated to the deputy magistrate's nazir that he had heard, from private sources, he could not divulge, prisoner No. 19, was one of the gang. This witness adds, none of his property has been recovered. The dacoity commissioner's account of this affair is not quite given with his usual accuracy.

To connect the prisoner No. 19, with this offence, and to bring him also under the general charge, there is as follows: He confessed in the mofussil the day after his arrest to having been engaged in the Azgattee dacoity, at the house of Gowreekant Roy, in company with prisoners Nos. 20, 21, 22, 23, 24 and 25. He did not compromise prisoner No. 26, who is charged on that count. He said he got no share of the plunder, prisoners Nos. 20, 21 and 25, having retained it. On the same day he again confessed to the deputy magistrate, to the extent only, however, that he had overheard the prisoners Nos. 20 to 25, propose depositing the plunder in the house of prisoner No. 20. This can scarcely be called "pleading guilty again with some variations." In support of these confessions, which, such as they are, are shewn by the evidence to have been freely and voluntarily made, there is the denunciation of the prisoner by no less than seven (not four) of his eight fellow-prisoners immediately on their arrest, and who had been arrested from his naming them.

Prisoner No. 20, is also charged with the Azgattee dacoity, and with having belonged to a gang of dacoits. He confessed in the mofussil to this and two other dacoities which are known to have occurred, and he named as his accomplices in the Azgattee affair all the prisoners charged with it. All of them in their confessions named *him* in like manner. Before the deputy magistrate he pleaded *not guilty*; but there is the following circumstantial evidence confirmatory of his first admissions. Prisoner said in his confession he had pledged all his plunder to one Sookchand Poddar, witness No. 74. What Sookchand gave up as a portion of this plunder has not been recognised by Gowreekant, but Sookchand admits (and witnesses Nos. 46 and 47 confirm the story) that when he produced the property which has been sent in with the trial, prisoner openly declared *that* was not the portion of it Sookchand had from him as a part of *this* (Azgattee) robbery. It is exceedingly probable Sookchand was afraid to deliver up the things in the case then under police enquiry on his own account. All his fellow-prisoners say, this prisoner kept from them the whole of the plunder at Azgattee. In his defence before me, the prisoner does

not attempt to prove, though denying his guilt, that he got the broken jewellery, &c. which he pawned to the witness Sookchand from his sister-in-law. His sole plea is an *alibi*; and of his witnesses, eight in number, not one gives any testimony whatever in support of it.

Prisoner No. 21, is charged with the Azgattee dacoity; with the dacoity at Sunhattee, on the 10th May, 1856; with having knowingly property acquired by dacoity, in his possession; and with having belonged to a gang of dacoits. He made a full and free confession to both affairs, both to the police and to the deputy magistrate the day after his arrest. Two pieces of property were found on him which he had obtained, he said, at Sunhattee. The owner of the property, witness No. 5, does not claim them; but it is clear, the reason is, he did not insert them in the list of the things he lost which he gave into the thannah when reporting the offence. This is constantly the case with persons robbed. That the Sunhattee dacoity, occurred as described is proved by the evidence of the witnesses Nos. 5, 6 and 7. Notice was given of the affair the day following, the 11th May, but nothing was done in the matter till the arrest of prisoner No. 19, in the Azgattee case. Then some of the stolen property was recovered from some of the prisoners in this calendar Nos. 24 and 27.

To connect prisoner No. 21 with the crimes with which he is charged, we have his two confessions corroborated by the delivery by the prisoner of certain property he declared on both occasions he had acquired by dacoity, and which property, now he pleads *not guilty* before me, he does not attempt otherwise to account for. Further he is implicated by seven of his confessing associates. He tells me, his confessions both to the police and to the deputy magistrate were made under compulsion. He says, the deputy magistrate being a native judge he was afraid to speak the truth to him by denying his previous admissions. He says no new defence was taken from him in the foudjary, and that he gave up no property from near his house, both of which statements are untrue from the evidence. Why should prisoner No. 21, have feared to retract to the deputy magistrate, and not prisoners Nos. 20 and 25? The prisoner has examined two witnesses to character, who, though one is his brother-in-law, say nothing in his favor. He summoned two other witnesses also to character, but as on being sworn he insisted on telling them what evidence to give, I refused to question them. Both the latter are his brothers-in-law.

Prisoner No. 22, is charged with the Azgattee dacoity and with having belonged to a gang. He made a full confession to the police naming as his accomplices amongst others all the prisoners charged in the calendar on the second count. In the foudjary he only allowed he had been an accessory after the

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fact. He said prisoner No. 21, had told him prisoners Nos. 23 and 26 and others had owned the Sunhattee dacoity in his presence, and had shewn him the plunder they got at Azgattee. These confessions are confirmed by the denunciation of the prisoner immediately after their arrest by no less than seven of his fellow-prisoners. I will here observe that the witnesses Nos. 77, 78 and 79, do not say this, or any of the other prisoners, they have been called to testify against, were known as thieves *before their present arrest*, or bore a bad character in the village. The defence of prisoner No. 22, is simply a denial of guilt and an assertion of his previous admissions having been extorted from him. This answer all confessing prisoners must necessarily give in my court, when pleading *not guilty*, as they invariably do. Of the three witnesses examined for the prisoner as to his previous good conduct, all speak well of him, one of the three being, however, a relative, and another a resident of another village two miles off.

Prisoner No. 23, is charged on all four counts. He confessed to the police on the same day as the rest, the 9th July; and named as his accomplices all his eight fellow-prisoners. This confession he repeated to the deputy magistrate as fully as before. Property has been produced as found on the prisoner, but it is not recognised by its reputed owner, the witness Bhugwan-chunder Chatterjea, most probably because it was not reported by him as stolen at the time. This, the prisoner admitted freely he had acquired by dacoity. He has given the same account of the disposal of the proceeds of the Sunhattee plunder as the other prisoners; and *seven* of his fellow-prisoners have compromised him in their confessions. In his defence before me the prisoner says he confessed to the deputy magistrate as prisoner No. 22 had been beaten for at first not confessing to him, which frightened the rest into doing the same. At all events it did not frighten prisoners Nos. 20 and 25, the first the head of the gang. Prisoner says both the things he first gave up to the police, and what he afterwards offered to produce to the deputy magistrate and did produce, were placed where they were found by the deputy magistrate's nazir who conducted the enquiry, and who instructed him where to look for them! Three witnesses have been examined for the prisoner, who have been cited to give him a good character, two of whom give him a bad one.

Prisoner No. 24, is charged on all four counts also. He confessed both to the police and to the deputy magistrate to the Sunhattee dacoity, and to also another dacoity not in the calendar in the house of one Chedam, also of Sunhattee. The commission of this dacoity has been proved by the evidence of witnesses Nos. 6 and 59, and property was given up by the prisoner as the proceeds of these two dacoities which has been

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recognised by the owners and others on their behalf. This prisoner denounced in his confessions all his fellow-prisoners and seven of his fellow-prisoners (six on the same date) denounced him. He pleads *not guilty* before me and asserts that his confession to the police was extorted from him by violence, but he does not say that to the deputy magistrate subsequently was so. He adds he had and produced no stolen property; and that what he is said to have given up was pointed out to him *by the dewan*. He has examined two witnesses (one being nearly related to him) who give him a good character.

Prisoner No. 25, is charged with the dacoity at Azgattee and with having belonged to a gang of dacoits. I do not agree with the committing officer that there is sufficient evidence to convict the prisoner on either of these two counts. It consists solely of a mofussil very imperfect confession retracted before the deputy magistrate,—imperfect, as of all the prisoners only No. 20, is mentioned in it, and it was merely admitted by him prisoner had been made acquainted with the commission of the offence afterwards. He never, for a moment, allowed he joined in the expedition, or shared the plunder. Beyond this, there is nothing, but the denunciation of him by his fellow-prisoners. His witnesses speak well of his general reputation. There is certainly suspicion attached to this person, but altogether insufficient legal evidence to convict him of the offence he is specially charged with.

Prisoner No. 26 is charged on all four counts in the calendar. He confessed on 9th July in the mofussil to the commission of four dacoities, two of them being those at Sunhattee and Azgattee. This confession he repeated as fully and freely to the deputy magistrate; and he gave up certain valuable articles as the produce of the robberies, some of which have been identified by the owner. Prisoner is named as an accomplice by six of his fellow-prisoners. His defence before me is, that he is not guilty and was made to confess by ill-usage. He denies that even his defence was taken down by the deputy magistrate, which, however, has been duly sworn to by the attesting witnesses. He concludes by asserting no property was found on him, which is so far true that it was found in accordance with his own admissions where he had carefully concealed it. His witnesses to character, three in number, give him a good character, one being his uncle.

Prisoner No. 27 is charged with dacoity at Sunhattee; with having knowingly in his possession goods obtained by dacoity; and with belonging to a gang of dacoits. To the police he made a full confession on both the first two counts, and this confession he repeated as fully to the deputy magistrate. Several articles were found buried where he described them which have been identified as part of the property lost by Bhugwanchunder



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at Sunhattee. Prisoner denounces all his fellow-prisoners, and three of *them* denounce *him*. His defence before me is, that he was at a village called Dabeetollahabad on the night of the Sunhattee dacoity; that he was ill-used and made to confess; that he was instructed what to say about the stolen property; and that the witness Bhugwanchunder has a spite against him for refusing once to give evidence in a murder case. This is all now said for the first time, and has evidently been concocted in the Hajut Guard. Prisoner's three witnesses are merely summoned to speak to his character, and one of the three says he is a rogue.

I acquit the prisoner No. 25, Neemchand Mozoomdar, and order his immediate release. With regard to all the rest, I feel compelled to recommend that they be sentenced as professional and habitual dacoits, now convicted of specific dacoities, to transportation with labor and irons for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners, Nos. 21, 23, 24, and 26, are charged on the 1st, 2nd, 3rd and 4th counts. Prisoner, No. 27, on the 1st, 3rd and 4th counts; and prisoners, Nos. 19, 20, and 22, on the 2nd and 4th counts.

The evidence against the prisoners, Nos. 21, 23, 24 and 26, consists of their voluntary confessions made before the police and deputy magistrate, corroborated by the fact of property belonging to the prosecutors, having been produced by the prisoners, as also by the confessions of their accomplices, these last supported by other facts, detailed in the record, such for instance, as musicians and brahmuns being in the house of Goureekant, on the night of the dacoity; and that Kootuboollah, named by all the prisoners as actively engaged in this dacoity, had means of knowing about Goureekant's property, he being Goureekant's servant.

The prisoner, Birajoodeen (No. 21) confessed in the mofussil to committing both the dacoities with which he is charged, in company with the other prisoners, and others not apprehended; and produced two brass vessels from a heap of straw as part of the property belonging to the prosecutor, Bhugoban Chuckerbutty. To the deputy magistrate, he only confessed to the dacoity in the house of Goureekant Roy (count 2); and the property produced by him is not recognised by the prosecutor, Bhugoban Chuckerbutty. This prisoner's name appears as engaged in these dacoities in the confessions of prisoners, Nos. 19, 20, 22, 23, 24, 26 and 27.

The prisoner, Kali Khan (No. 23) confessed in the mofussil and before the deputy magistrate to committing both the dacoities with which he is charged, in company with the other prisoners and others; he produced some cloths and part of a silver bracelet, as property obtained in the Sunhattee dacoity.

ty, (count 1;) but the cloths are not recognised by the prosecutor, Bhugoban Chuckerbutty, and he is unable fully to identify the bracelet. This prisoner is implicated in the confessions of all the other prisoners.

The prisoner, Kussemooddeen (No. 24) denies having committed the dacoity in the house of Goureekant Roy (count 2;) but confesses to having committed a dacoity with the other prisoners and others, in the house of a smith in Sunhattee in the month of Assin; and that in that dacoity, he got sundry gold and silver ornaments as his share of the plunder, which he buried in the north-west corner of his cow-house. He adds that in Bysack or Jeyt last, in company with the other prisoners, he committed the dacoity in Bhugoban Chuckerbutty's house (count 1), and received as his share of the plunder certain gold beads and other ornaments, and a brass bowl; he states that he concealed the bowl in a hole full of water, and buried the ornaments in the cow-house, with other articles formerly concealed there; and when apprehended, he produced them all. Of those articles, the prosecutor recognised Nos. 3, 4, 5 and 6, as his property; the remainder of the ornaments have been identified by Cheedam Kurmocar (smith) of Sunhattee, to the dacoity in whose house the prisoners also confessed. Before the deputy magistrate, he repeated this confession and implicated all his fellow-prisoners. He is also named in the confessions of Nos. 19, 20, 21, 22, 23, 26 and 27.

The prisoner, Shoma *alias* Shumshooddeen (No. 26) confessed before the police mohurrir and deputy magistrate, to having committed both the dacoities with which he stands charged, in company with the other prisoners; and also to having been concerned with them in two other dacoities in a Brahmun's house in Kalishpoor, and in a Mozoomdar's house in Moheshpasa. In the last-mentioned dacoity, he got two silver chains, which, together with property obtained in the dacoity in Bhugoban Chuckerbutty's house, he produced. Bhugoban Chuckerbutty recognises the property marked No. 1 gold beads, and No. 2, a brass *jharree*. The prisoner is implicated in the confessions of prisoners Nos. 20, 21, 22, 23, 24 and 27.

The prisoner, Tophan Moollah (No. 27) stated to the police and deputy magistrate that one night in the month of Jeyt last he had gone to look at his fishing nets, and was met by the other prisoners, who, with other people, were in a boat on their way to commit the dacoity in Bhugoban Chuckerbutty's house; and that they compelled him to join them by threats of instant death, if he refused. He adds that after the dacoity had been committed, he received sundry gold and silver ornaments, and a large bowl, as his share of the plunder; that he at first refused to take them, but was compelled to do so by the threats of Teetoo Roy and Neemchand. He produced the property when

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apprehended. The prosecutor, Bhugoban Chuckerbutty, recognises as his property, articles Nos. 7 and 8, of the property found with the prisoners; but does not fully identify No. 9. The prisoner says he is a servant of the prosecutor; adding that for his ingratitude (*nimuk-harami*) he was found out. He is mentioned in the confessions of prisoners, Nos. 21, 23, 24 and 26, as the party on whose information the dacoity took place; and, as a servant of the prosecutor, he had the means of obtaining such information.

The prisoner, Basheeroodeen (No. 19) confessed before the police to having committed the dacoity in mouza Azghattee (count 2) in company with Teetoo Roy and the other prisoners; but before the deputy magistrate, he stated that seeing Teetoo Roy, Meajan, Neemchand and Beerajdeen consulting together before the *ruth jatra*, he, on hearing of the dacoity in Goureekant's house, knew that they and others, whom he mentioned, had committed it, and had put the property into the houses of Teetoo Roy and Neemchand. How he knew the latter fact, or the names of the accomplices, is not stated or explained in any way. This prisoner is also implicated by the confessions of all the other prisoners.

The prisoner, Teetoo Roy *alias* Bishumbhur (No. 20) confessed in full detail before the police to his participation in the Azghattee dacoity (count 2) in company with the other prisoners and others, and corroborates their statements that he, Teetoo Roy, opened out the plunder; and as it consisted of ornaments, not easily disposed of and not customarily used by people of the prisoner's class, he had, with their consent, taken charge of it, and promised to sell the things, and divide the proceeds; that he had accordingly made them over to Sookchand Potdar of Sambazar, but had not received the price. He denied having committed the dacoity in Bhugoban Chuckerbutty's house, but admitted having been concerned in the dacoities of Kalishpore and Moheshurpasa, mentioned by Shomush, prisoner No. 26. To the deputy magistrate he denied all knowledge of these dacoities. The fact of this prisoner being intrusted with the disposal of the plunder is stated in all the other confessions, as also the fact of his being the sirdar of the gang, and of his having the *koolari* with which the door of Goureekant's house was broken open. In his mofussil confession, he acknowledges having had charge of that instrument, and endeavouring to break open the door with it.

The prisoner, Meajan (No. 22) confessed in the mofussil to having been engaged in the Azghattee dacoity, (count 2.) He repudiated this confession before the deputy magistrate, and stated that Beerajdeen had told him that he (Beerajdeen) and others had committed the dacoity in Goureekant's house; and that one morning early, in Bysack or Jeyt, he saw Shoma, No.

26, Kali Khan, No. 23, and Beerajdeen, No. 21, passing his house, and in reply to his question as to what they had been about, they said they had committed a dacoity in Bhugoban Chuckerbutty's house, and had part of the property with them, which they described, and then went away. The prisoner is implicated by the confessions of all the other prisoners ; but he tells the deputy magistrate that the confession he made in the mofussil was not voluntary. He does not, however, prove this ; nor is it shewn in any way.

Before the sessions judge, all the prisoners denied the charge, and declared that the confessions were given through fear, and that the statements made therein are untrue. The confessions, however, both to the police and before the deputy magistrate have been attested by the witnesses before whom they were made, and by the deputy magistrate's certificate, and are proved to have been given voluntarily. They are given in much detail, and corroborate one another in many and minute circumstances, and to such a degree that considering how little time the police had before the deputy magistrate arrived at the spot to extort so many confessions, or to concoct so many detailed stories, varying in unimportant particulars, but substantiating each other in leading and essential matters, we consider these confessions to be trustworthy, and to be corroborated by the finding of property, and by its identification ; the prosecutors, in this respect, being apparently careful not to claim things which they were not sure of being theirs. We consider *all these circumstances together* sufficiently prove the guilt of the prisoners. We therefore convict the prisoners Nos. 23 and 26, on their own confessions, tallying with the confessions of their accomplices, both supported by the fact of property identified by the prosecutor Bhugoban Chuckerbutty being produced by them, on all the counts. Prisoners Nos. 24 and 27, on the 1st, 3rd and 4th counts, on the same evidence. Prisoner No. 21, on the 1st, 2nd and 4th counts : and prisoners Nos. 19, 20 and 22, on the 2nd and 4th counts, on their own confessions, tallying with the confessions of others, both supported by the facts connected with the dacoities ; and we sentence them, with reference to the precedent of this Court in the case of Gopaul Dolaie, N. A. R. for 1852, page 613, to transportation for life.

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Case of  
BUSHEER-  
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CHOWKEEDAR  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*KHYALEE DOBEY, LATE JEMADAR OF THANNAH  
BANSBERYAH.

Hooghly.

1856.

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Case of  
KHYALEE  
DOBEY late  
jemadar of  
thannah Bans-  
beryah.

Appeal re-  
jected. Pri-  
soner convict-  
ed on sufficient  
evidence of  
bribery and  
corruption, in  
regard to the  
escape of a pri-  
soner.

CRIME CHARGED.—1st count, having on the 15th July, 1856, after arresting a prisoner, named Gobind Teelee, against whom a warrant had issued, wilfully aided and abetted in the escape from arrest of the said Gobind Teelee; 2nd count, having received a bribe of Rs. 134-8 from one Ram Loll Teelee by colour of his office as a jemadar of police in consideration of his having suffered the said Gobind Teelee to escape; 3rd count, forwarding a false return representing that the said Gobind Teelee could not be found and he (jemadar) was therefore unable to execute the warrant.

CRIME ESTABLISHED.—Bribery and corruption.

Committing Officer.—Mr. F. R. Cockerell, magistrate of Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 19th September, 1856.

*Remarks by the additional sessions judge.*—In the Gazeedorga dacoity a number of banknotes of considerable value, whose numbers, &c. were known, were carried off by the dacoits, and a clue was obtained to the offenders by one of the gang getting four of them cashed at Serampore. An order was issued to the prisoner in this calendar then a jemadar of police to seize one Gobind Teelee the member of the gang alluded to, but the jemadar made a return to the effect that Gobind Teelee was not at his village and could not be found. This return appeared to be attested by five residents of the place, Koilas, Neelmony, Gorachand, Issur Chunder Dey (witness No. 5) and Mohesh Chunder Set, (witness No. 6). A few days afterwards the search by the dacoity commissioner of Gobind Teelee, (witness No. 1,) being continued, and the pursuit being hot, that person came into Hooghly and delivered himself up, and at once made a detailed confession of the Gazeedorga and many other dacoities in which he had been concerned. In this confession incidentally mentioned (for once confessing with the expectation perhaps of becoming an approver usually nothing is kept back by the confessary) that the prisoner had seized him under the previous warrant at the house of Mohesh Chunder Dey (witness No. 2) at Muggra, and had released him the same night in consideration of a payment to him (the jemadar) of the sum of Rs. 125 (in

addition to a previous douceur of 9 Rs. 8 annas for good *treatment*) from his (Gobind Telee's) relative and partner, Ram Loll Dey, whose shop is close to Mohesh Chunder Dey's. Gobind Telee added that when this payment was made the false return abovementioned was concocted by Mohesh Dey signing for Mohesh Set, Ram Loll signing for Ishur, and the rest signing for themselves, viz. Gorachand, Neelmony and Kylass. These three last are not to be found, and they are clearly keeping out of the way for fear of punishment for their share of the transaction.

The 2nd, 3rd and 4th witnesses all testify of their own knowledge to Gobind Telee's arrest by the prisoner; witnesses Nos. 5, 6 and 8, declare it was well known at the place he had been arrested and let go again for a sum of money. Mohesh Chunder Dey, witness No. 2, has in my presence written the name of Mohesh Chunder Set exactly as it appears on the false return; and witnesses Nos. 5 and 6 declare their signature to the return to be forgeries.

In his defence, the prisoner maintains the authenticity of the return in all its particulars, and declares the Rs. 185-7-3, found in his chest, at one time to be all his own savings, and at another to be 105 rupees of it his own and the remainder the property of two friends of his. These friends he has not summoned as witnesses, and the three witnesses he has summoned to speak to his having failed in his endeavours to apprehend Gobind Telee, declare they know nothing about it.

I have tried the case with a jury, who have declared the prisoner guilty of the charges brought against him, and I, concurring with the verdict, sentenced him for bribery and corruption to three years' imprisonment with labor suited to his habits commutable to a fine of 125 rupees payable in fifteen days.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The grounds of appeal are these. First, the evidence of Govind Telee, the principal witness, taken before the magistrate, contradicts the evidence given by him at the trial before the sessions judge, as to the party who actually paid the money to the jemadar. Second, his evidence is contradictory as to the parties who were present when the money was paid; and though to the magistrate he says Mohesh Set and Ishur Dey were present when the money was paid, he afterwards said they were not present, when the false return was given to the jemadar. Third, the evidence of Mohesh Lal in respect to the jemadar's acquaintance with Govind Telee is contradicted by that of Roopchand. Fourth, the depositions of Koilas, Neelmony Gorachand and Ramlal, necessary witnesses, were not taken. Fifth, the prisoner is arraigned for receiving a bribe of Rs. 134-8, while Moheshchunder deposes only to have paid Rs. 125. Sixth, the evidence of Govind Telee apprehended for dacoity, is unworthy of credit, as he is of infamous character, and he may have come into

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DOBEY late jemadar of than-nah Bansber-ryah.

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Case of

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collision with the jemadar in the course of his (the jemadar's) duty, and in consequence got up this charge. Seventh, the sessions judge states that the prisoner's witnesses say nothing in his favor; but as these witnesses, who are police officers of that thannah, deposed that they knew nothing of the arrest of Govind Telce, their statements overthrow the judge's argument, and render the hearsay evidence of Lalgopal Mozoomdar and others, as to the arrest, unworthy of credit.

With regard to the first plea, we find no essential discrepancy. To the magistrate, the witness, Govind Telce, stated that Ramlal and Moheshchunder paid the money to the appellant. Before the sessions judge, he deposed that Neelmony received the money for Ramlal, and paid it to the jemadar, and that Ramlal and Mohesh had deposited it in his (witness's) house. All three were evidently present when the money was paid. With regard to the second plea, the above witness, Govind Telce, in his deposition to the magistrate, stated that *Mohesh Set* and Ishur Dey were present when the money was paid. In his deposition before the sessions judge, he stated that *Mohesh Dey* and Ramlal Dey were present. This discrepancy in the names of the parties present, when the money was paid, does not, however, assist the appellant's argument, which is that Mohesh Set and Ishur Dey, who say they were absent, must also have been present, when the false return prepared with the connivance of the jemadar, was written; for, even admitting that they were present, when the money was paid, it does not appear that the return was written at that time.

There is no contradiction in the evidence of Roopchand Pal and Moheshchunder as urged in the 3rd plea; and if, as urged in the 4th plea, the depositions of Koilas and others, were necessary, the prisoner should have required their attendance. The objection urged in the 5th plea requires no further notice. No such objection, as taken in the 6th plea, can be properly admitted as to the evidence of the witness, Govind Telce, on account of infamy of character; nor in his defence does the appellant urge that the *witness* has got up the case against him. He accuses the *zemindar* of having done so. The evidence against the Jemadar came out incidentally in the general confession made by Gobind Telce before the dacoity commissioner, which was made without direct reference to any case implicating the appellant. The argument urged in the last plea is invalid. The witnesses for the defence were asked if they knew that the prisoner had exerted himself to apprehend Gobind Telce, and they replied that they knew nothing about it. We see no grounds for interfering with the decision of the sessions judge, and reject the appeal.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

DABEE BAROEE (No. 1,) POCHOO BHOONYA (No. 2,) BABOORAM KOURAH (No. 3,) AND GOBIND DOSS ALIAS GUMDEE DOSS (No. 4.)

Midnapore.

CRIME CHARGED.—1st count, Nos. 1 to 4, dacoity on the 29th March, 1843, in the house of Soonder Sahoo, son of Rampershad Sahoo, inhabitant of Ticcasee, thannah Kanchunnugur; 2nd count, Nos. 1 to 4, dacoity, on the 24th March, 1844, in the house of Keenaram Sahoo, inhabitant of Ticcasee, Barh Rarha Bag, thannah Kanchunnuggur; 3rd count, Nos. 1 to 4, dacoity on the 10th June, 1847, in the house of Sunkur Hajrah, master of Seebram Berah (plaintiff), inhabitant of Goopeenathpore, thannah Nemal; 4th count, Nos. 1 and 3, dacoity on 8th July, 1851, in the house of Kistomohun Mahitee, nephew of Santiram Mahitee, inhabitant of Saootalchuck, thannah Kanchunnuggur; 5th count, Nos. 1 and 3, and 4th count, Nos. 2 and 4, being by profession dacoits, and having belonged to gangs of dacoits, under Sirdar Dhunnoo Bloonya and others, convicts.

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Case of  
DABEE  
BAROEE  
and others.

Prisoners convicted and sentenced under Act XXIV. of 1843, the testimony of the approver —witnesses being corroborated by independent evidence.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 25th October, 1856.

*Remarks by the officiating sessions judge.*—The prisoners plead *not guilty* and urge in defence their good character and some petty instances of misunderstanding with one or two of the approver witnesses.

Three approver witnesses speak to their identity, of which there is no doubt. Two of them and the prisoners are residents of the same village.

\* *Nuthee No. 226.*  
Dacoity in the house of Soonder Sahoo, son of Rampershad Sahoo.

These witnesses also denounce them as their accomplices in the several dacoities charged, in support and corroboration of this part of their testimony the records noted in the margin\* have been laid before the court.

*Nuthee No. 235.*  
Dacoity in the house of Keenaram Sahoo No. 1, Khatuma and daily report (copies) in the dacoity, in the house of Sunkur Hajrah.

*Nuthee No. 623.*  
Attempt at dacoity in the house of Kistomohun Mahitee, nephew of Santiram Mahitee.



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CASE OF  
DABEE  
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and others.

\* Government  
*versus*

Kisto Seet and Modoo Samoe.

The record of the first dacoity charged, numbered 226, was produced on a previous trial,\* and shows that a dacoity was committed on the 29th (not 23rd as then intimated) of March, 1843, corresponding with the

18th Choit, in the house of Soondernarain, the son of Rampershad Sahoo of Ticcasse, and 163 items of property, plundered.

The next Ramhoree Booneeah, a pyke in the service of the prosecutor, swore to having recognised Baboo Sunkur, a salt darogah, Moocheeram Sahoo and Daneedudee, on the 31st idem. Nehal Singh deposed that he had knocked down two of the dacoits with his club, and would be able to recognise some of them. One Manikram Singh burkandaz of pharee Bahirmootah, under the thannah of Nermal, reported under date the 22nd Choit, to the darogah, that he ascertained on going his rounds on the 18th Choit, that Moocheeram Jana was absent from his house, that on the evening when his report was dated, the chowkeedar had brought the man and he then appeared with the mark of a blow on his forehead, just above the eye. Information of this was transmitted to the darogah of Kanchunnuggur, in whose jurisdiction the dacoity aforesaid had taken place. The jemadar and Soonder Sahoo's brother-in-law, Bowanee Pridhan were deputed and searched Moocheeram's house. Nehal Singh aforesaid, who appears to have been with them, swore to the said Moocheeram and to *Dhunnoo Booneeah*, the chowkeedar of that village and witness No. 2, of this trial, as having taken a part in the dacoity. On the villagers having been collected, he pointed out Modoo Patur, Dabee Baroee, prisoner No. 1, Pochoo Booneeah Athgeria, prisoner No. 2, Anuntaram, Nagao Doss and others, as the dacoits. Bowanee Pridhan, on this, prayed that their houses and those of Babooram, prisoner No. 3, and Gobind Doss, prisoner No. 4, (in which he had reason to suspect property was secreted) might be searched, and he recognised some of the property that was found. In the pond of one Bunnoo Aree a bow was then found and his house searched when a *gotee* sworn to by Bowanee Pridhan was found.

Nehal Singh declared this man also to have been with the dacoits, Bunnoo Aree was unable to stand from some injury he had received he could not raise his right arm. He explained that he had been gored by a wild buffalo, which he had chased, but no wounds were apparent on his person that could have been received in that manner.

Moocheeram denied the charge. Dhunnoo Booneeah Chowkeedar of Mundoparah, was proved to have been absent on the night of the 18th Choit, he stated that at one *puhur* of that night forty men of Mundoparah and other villages had assembled at Gopee Booneeah's house.

Some time after this, viz. on 13th April, Musst. Champee and Mohun Neyeeah, were arrested on the information of Nursing Mundul Chowkeedar and Beeroo Booneeah. The latter confessed to the jemadar his participation in the dacoity, and implicated Dhunnoo and Modoo Booneeahs, witnesses Nos. 2 and 3 of this trial, Moocheeram Jana, Nokowree Ghora, Modoo Patur Chowkeedar, Bunhoo Aree or Uddee, Nagoo Doss and others. Musst. Champee the mistress of Dhunnoo Booneeah then stated that fifteen or sixteen days ago Gobindhee Doss, Nagoo Doss, Mohun Neyeeah, Nokowree Kara, ditto Ghora, Babooram Kara, prisoner No. 3, of this trial, Bunnoo Adda, Modoo Patur, Moocheeram Jana, Pochoo Booneeah, prisoner No. 2, and Davee Baroe, prisoner No. 1, of this trial, Modoo Samoe (convicted by the Court on the 16th September, 1856,) Dhunnoo Doss, witness No. 1, of this trial, Narain Geeree, a salt chaprasee, name not mentioned, Dhunnoo and his brother, assembled at Dhunnoo's house, and at one *gurree* of night went forth to commit the dacoity; that Modoo Somoe had previously prepared a boat to cross the Sonia river; that Dhunnoo and his brother, Modoo, did not return until day-break, when the former gave her some of the property. She repeated her confession to the darogah, but Mohun Neyeeah denied his.

Finally, the darogah reported the case had been trumped up to bring the salt darogah into disgrace, &c. and this opinion was adopted by the magistrate at the time, but it does not appear to me warranted by the record.

*Case No. 235, Heinous, 172.*—The record of this case shows a dacoity to have occurred, on the 24th March, 1844, in the house of Keenaram Sahoo of Ticcasee, Barh Ruruha Bag, when property, valued at Rs. 409-3, was plundered. That night information was given at thannah Kanchunnuggur and the darogah proceeded the following morning to the spot, saw indubitable signs that a dacoity had been committed and that the owner of the house had been beaten.

The prosecutor deposed to having recognised Bowanee Pridhan, (who appears from the evidence of the approvers to be the same individual that is mentioned in the last case as the brother-in-law of Soonder Sahoo,) Modhoo Pridhan, Bikram and Koochil Singh, Dhunnoo and Modhoo Booneeahs, witnesses Nos. 2 and 3, of this trial, Moocheeram Jana, and others. He also named Davee Baroe prisoner No. 1, and Gobind Doss prisoner No. 4, but the manner in which he alludes to these men renders his recognition doubtful. The aforesaid witnesses as also the prisoners Nos. 1 and 2, were arrested at the time, and denied their guilt. Seven men were sent into the magistrate but were discharged by him. The magistrate pronounced the dacoity false, but I can see no grounds for this opinion.

*Case No. 1.*—This was a dacoity committed in the house of

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one Sunkur Hajrah. It would appear from a report of the *mohafex* of the magistrate's office, dated 26th April last, that this dacoity was exhibited in the register as No. 3892, but that the record has been lost. The assistant commissioner for suppression of dacoity on this obtained from the thannah a copy of the final report of the darogah, dated 19th August, 1847, from which it is evident that a dacoity as charged, was committed in the village of Goopeenathpore and property valued at Rs. 1055 plundered. Ten men were committed for trial but acquitted on the 3rd December, 1847, the prisoners, however, were not amongst them. This case was also laid before the court on the trial of the prisoners Kisto Seet and Modhoo Samoe; since which, Captain Keighly issued an order to the darogah for the production of any other papers procurable in elucidation of the case. The darogah on the 20th forwarded copies of the daily reports made in the case on several dates from the 12th June to 6th July.

The report of the 13th shews that Punnoo Geeree, Nokowree Degar, Modhoo, and Dhunnoo Booneeahs, witnesses Nos. 2 and 3, of this trial, Madhob Manjee, Soondur and Kisto Seet, Babooram, and Davee Seet were arrested and their answers taken. That of the 14th shews the apprehension of Dhunnoo Doss, witness No. 1, of this trial, and others. The final report records that Kishto Seet, Soondur Seet, Babooram Koonda and Davee Seet made confession to the jemadar. This man is the witness No. 4 of this trial.

*Case No. 623*, is the record of an attempt at dacoity in the house of Kisto Mohun Mytee, the nephew of Santiram, in the village of Sauntal Chuck.

The proprietor was absent from his house, but his servants stated that fifteen or sixteen dacoits had come to the house but fled on the pykes and villagers collecting. No names transpired in this case.

To sum up briefly. In the case No. 226, the evidence of the approvers, as regards prisoners Nos. 1 and 2,\* is corroborated

\* Dabee Baroee.  
Pochoo Booneeah.

by the recognition at the time of Nehal Singh, a servant of the prosecutor, who knocked down

two of the dacoits, and by the confession of Musst. Champee, the mistress of witness No. 2, Dhunnoo Booneeah, which mentions them amongst others as having collected at Dhunnoo's house in Mundoparah, and gone forth to commit the dacoity. As regards prisoner No. 3† it is corroborated by the said confession.

† Babooram Korah.

In this case witness No. 2 was also recognised by Nehal Singh and witnesses Nos. 2 and 3 are named in the confession of Mohun Neyeelah and all three witnesses in that of Champee,

*In Case No. 235*, the evidence is corroborated by the recognition of the prosecutor, but he wavers in his statement as regards prisoners Nos. 1 and 4.\* Two of the approver witnesses,

\* Dabee Baroee, Gobind Doss  
alias Gumdee Doss.

Nos. 2 and 3, were, however, distinctly recognised by him. All were arrested at the time, but

discharged.

*In Case No. 1*, it appears from the only papers that are forthcoming that the prisoner, No. 3† and the witnesses,

† Babooram Korah.

Nos. 1 and 2, of this trial were arrested, and that prisoner, No.

3, confessed at the time to the jemadar, Takoordeen Tewaree, witness No. 4, of this trial. He has now deposed to the fact and that Gobind Doss, prisoner No. 4, was also arrested by him at the time. This evidence of the jemadar is supported by witnesses, Nos. 12, 13 and 14, for the defence, especially by the latter. There is then quite sufficient corroboration of the evidence of the approvers to warrant reliance on their testimony. I therefore convict the prisoners of having belonged to a gang of dacoits, and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present : Messrs. G. Loch and H. V. Bayley.) The counsel for appellant urges; firstly, that the magistrate has deemed that the dacoities charged in the 1st and 2nd counts were false; secondly, that ten persons were committed for trial for the dacoity charged in the 3rd count, and prisoners were not amongst them; thirdly, that when the precise names do not transpire at the time, the Nizamut Adawlut are unwilling to convict; fourthly, that the cases of Hossein Nooney of 18th January, 1856; Madub Peria of 25th January, 1856; Sodha Fuqueer of 4th April, 1856, Brijohurree of 13th April, 1856; and of Anund Roy 19th July, 1856, shew how little reliance is put by the Nizamut Adawlut on the testimony of approvers.

On the first point, we would observe that we have carefully read the records of the dacoities charged in the first and second counts, and we concur with the sessions judge in considering that they shew little to justify, and very many things to contradict such a conclusion as that stated to have been come to by the magistrate. The record of the Nizamut Adawlut trial of the 19th September, 1856, Government *versus* Kisto Seet and others, quite bears out this view. On the second point, we consider that the mere escape of a prisoner at one time cannot be deemed to be (as counsel endeavoured to shew) a species of general acquittal. On the third and fourth points, we have to observe that the counsel should have shewn that the case now before us is precisely one similar to those which he has cited. This he has not done.

We have compared the testimony of the witnesses (approvers)

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with the general confessions taken before the apprehension of the prisoners, and with the records of the dacoities charged; and we see no reason to doubt their testimony, as it is corroborated by particular circumstances on those records, stated at the time of the dacoity, as to the leaders of the gangs, the parties wounded, and those apprehended; and by its agreement with the statements of parties for the prosecution; and of persons apprehended at *that* time, as to the particulars now deposed to. Moreover, the fact of the prisoners and the approver—witnesses, being together engaged in the dacoities in question is shewn by those records.

We convict the prisoners under Act XXIV. 1843, and sentence them to be transported for life.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND PITAMBER GHOSE

*versus*

East-Burd-  
wan.

RAM SIRDAR CHOWKEEDAR.

1857.

February 4.

Case of  
RAM SIRDAR  
CHOWKEE-  
DAR.

CRIME CHARGED.—Wounding the prosecutor, Pitamber Ghose, with intent to murder him.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East-Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East-Burdwan, on the 1st December, 1856.

Prisoner sen-  
tenced to 14  
years' im-  
prisonment for  
severe wound-  
ing.

*Remarks by the officiating sessions judge.*—The circumstances of the case are thus related by the magistrate in the calendar of commitment. The prosecutor was going from his house in Parshapore, at about 7 o'clock in the evening of the 17th Bhadro, corresponding with 31st August, to the adjoining village of Bagadanga, to collect laborers, when about forty beegahs from his own house, he saw a man standing near him under a tree, he called out to him, when he immediately attacked him with a *kathan* or large sacrificing knife, and inflicted a severe wound on his left arm and then effected his escape.

The reason for the assault given by the prosecutor is, that he and the prisoner had quarrelled in consequence of his (the prosecutor's) cows having destroyed the prisoner's crop. Thinking it improbable that the prisoner should have made such an attack on the prosecutor for so trifling a quarrel, I directed the darogah to proceed himself to the spot and ascertain whether there was any other cause of quarrel and though no one would openly disclose the fact, the darogah found out by secret enquiry the prosecutor was in the habit of paying visits to the prisoner's

concubine and that the prisoner had received information of it. This was doubtless the reason for the assault, but the prosecutor being a Guala, and the prisoner's concubine a Chandal, he will not allow it.

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RAM SIEDAR  
CHOWKEE-  
DAR.

The attack by prisoner on the prosecutor has been fully proved.\* All the parties reside in the same village, and there is no reason to

\* Prosecutor, witnesses Nos. 1, 2, 6 and 7.

doubt the truth of the asserted recognition. Prosecutor and his witnesses adhered to their former statement regarding the cause of enmity. The weapon was not found. The civil assistant surgeon has proved that the prosecutor has sustained a permanent injury.

Prisoner's defence is, that he was dispossessed of some *chake-ran* land by the village authorities; that he obtained redress from the magistrate, but that he has been again dispossessed, and that his cousin, witness No. 6, has received the land from the zemindar. Witness No. 6, has denied the truth of that allegation; and prisoner's witnesses have stated nothing in his favor.

A respectable jury† have found the prisoner guilty of the charge preferred against him.

† Moonshee Jahad Ali.  
Baboo Issanchunder Chatterjea.  
Moulvee Mahomed Muzhur.

I concur in that conviction. It seems quite clear that the prisoner waited for

the prosecutor with the deliberate design of murdering him, and that it was only owing to prosecutor's attention having been aroused and to his having thrown up his arm to save his throat, and to the timely arrival of the witnesses, attracted by prosecutor's cries, that that design was not consummated. I would recommend that the prisoner be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The case against the prisoner, as to the above details, is clearly proved. The *kathan* is described by one witness as one and a half cubit long. The wounds are deposed to by the civil surgeon as "a severe wound on his left arm, a small skin wound on the same arm, and a skin wound on the left side of his body," and as likely to be caused by "a sharp heavy instrument." The prisoner's defence is contradictory; (that before the magistrate being silent as to the zemindar's interference with his land, which is stated in the sessions;) and neither the enmity of the villagers, nor his *alibi* are in any way substantiated. Referring to the Nizamut Adawlut precedent August 27th, 1853, case of Chooneelal Dutt, where the instrument was much the same, and the wounds more severe, and to the terms of Section 2, Regulation XII. of 1829, we consider fourteen years' imprisonment in labor and irons, the proper punishment in this case.

## PRESENT :

J. H. PATTON AND A. SCONCE, Esqs., *Judges*, AND J. S. TORRENS, Esq., *Officiating Judge*.

## GOVERNMENT

*versus*

## HINGHOORAJ RAI.

Sarun.

1857.

February 6.

Case of  
HINGHOORAJ  
RAI.

Prisoner ac-  
quitted; in-  
tent to commit  
wilful perjury  
not being con-  
sidered prov-  
ed.

**CRIME CHARGED.**—Perjury in having on the 17th September, 1856, corresponding with 3rd Assin, 1264, F. S., having deposed under a solemn declaration taken instead of an oath before the magistrate of Sarun, that he *saw* Pershan Rai, defendant mounted on Musst. Deokowree prosecutrix (*mudai par charatha*) and that on his arrival he (Pershan Rai) let go of her, and in having again on the same day intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the said magistrate that the prosecutrix was saying that he (Pershan Rai,) was forcing her but that he *did not see* him forcing her; such statements being contradictory of each other on a point material to the issue of the case.

**CRIME ESTABLISHED.**—The same as crime charged.

**Committing Officer.**—Mr. W. F. McDonell, magistrate of Sarun.

Tried before Mr. H. Atherton, sessions judge of Sarun, on the 21st October, 1856.

*Remarks by the sessions judge.*—This case has arisen out of a charge of rape brought by Musst. Deokowree, against one Pershan Rai. The defendant, in this case, was a witness on the part of Deokowree and first of all when examined by the magistrate under Act V. of 1840, stated that he had seen Pershan Rai on the person of Deokowree and afterwards on being cross-questioned denied having seen Pershan Rai committing the rape. It seems that the woman herself stated at the thannah that she had been raped, but afterwards denied the perpetration of the crime before the magistrate, and the defendant, accordingly, gave another and different account when he discovered from the question put to him by the magistrate that the plaintiff no longer stuck to her first story. The perjury is clearly proved by the evidence of witnesses Nos. 1, 3 and 5, it being clear that the statements made by the prisoner under Act V. of 1840 are directly at variance on a point material to the issue of the case in which they were made.

*Sentence passed by the lower court.*—To be imprisoned with labor and without irons for three (3) years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. H. Patton, A. Sconce and J. S. Torrens.)

*Mr. J. H. Patton.*—The prisoner stated in his examination in chief that he had witnessed the assault with which one Pershan Rai was charged ; but on cross-examination repudiated that statement, and said that he had not seen the offence committed, but heard from the prosecutrix in the case that it had been perpetrated. These statements are as contradictory of each other as they can well be and were given on a point most material to the issue of the case, namely, the guilt or innocence of the accused.

The prisoner admits having made these conflicting statements, but pleads in extenuation that he did so under the confusion and excitement of finding himself for the first time in a court of justice. This plea, however, cannot avail him, as the facts on record warrant the presumption that another motive induced him to depart from his original statement, namely, the abandonment by the prosecutrix of the charge first made. This makes the perjury wilful and deliberate. I would convict the prisoner and sentence him as proposed.

*Mr. J. S. Torrens.*—The prisoner has been convicted of perjury for having sworn to two conflicting statements in the course of his deposition before the magistrate on the 17th of September last. The charge, under investigation, was one of rape. Prisoner being called as a witness, at first stated that hearing the cries of the prosecutrix, he, along with another party, had fled to her assistance, and found her confined by the party charged, in an enclosure of his cattle-fold ; the prosecutrix was receiving, as he described it, "*be-ijut*" at the time of his (prisoner's) arrival. On a question put to him by the magistrate, he says that the party charged was "*churha*," on the prosecutrix, that he saw it ; on another question in cross-examination he says that he did not actually see the "*be-ijut*," but he had heard of it from the prosecutrix, for this extent of contradiction in cross-examination he has been found guilty of wilful perjury. It is to be observed, as the deposition stands recorded, or as far as there was any attempt on part of the magistrate to bring out definitely, what the prisoner actually meant by the terms "*churha*" and "*be-ijut*" both of the vaguest signification in a charge even of assault, the prisoner in his evidence still held to his original assertion that he had on his arrival, found the prosecutrix held under durance by the accused ; and the only variation really in his evidence is, as to the extent or nature of the "*be-ijut*" so described, which he had himself actually witnessed.

In his defence he pleads that he was so confused during the examination, that he fell into the contradiction without intention ; and under the mode in which the examination is shown, by the record of it, to have been conducted, I am of opinion that no designed or wilful misstatement is made good against

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him; and that there is no amount of contradiction which we should not, as the record is before us, hold sufficiently accounted for by the defence raised. Had the examination by the magistrate proceeded further, so as to show more definitely what it was the prisoner meant by the expressions above noticed, it is possible that his deposition might have evinced a wilful perjury; but I do not gather this from what is now before us.

The charge, which had been preferred, was, it appears, not wholly a false one; it was apparently one of an assault or an unjustifiable restraint on the prosecutrix exaggerated into a charge of rape; which latter, either from finding what acts were necessary to constitute or warrant such a charge, or from other cause, she departed from. There is apparently no intention in the whole case, which can warrant the conclusion that the prisoner came forward and wilfully deposed to what he knew to be false. If it was shown clearly that he had done so, I would affirm the sentence; but considering the difficulties which natives are under when giving their depositions, to have them recorded before European officers or native officers themselves; considering also the way in which such depositions are known to be taken, I cannot, under the circumstances of this case, convict this prisoner on one which I conceive to be so loosely and vaguely taken down, as that on which the charge of perjury has been preferred against him.

*Mr. A. Sconce.*—I concur in the acquittal of the prisoner Hinghooraj Rai, for the reasons given by Mr. Torrens. I observe also in the deposition of the prisoner another contradiction loosely spoken, which, like that charged, might have been taken to found a charge of perjury. The prisoner stated that when he ran up, he (and another man) made Pershan Rai let go the complainant; and immediately after, he said that on his coming up to the spot, Pershan Rai himself let the woman go.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND MUSST. OOMAH BEWAH

*versus*

KACHAEE FUKER.

Dacca.

CRIME CHARGED.—Wilful murder of Nubeen, a boy aged seven, son of the prosecutrix Oomah Bewah.

1857.

Committing Officer.—Mr. C. Jenkins, officiating magistrate of Dacca.

February 7.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 25th November, 1856.

Case of  
KACHAEE  
FUKER.

*Remarks by the officiating sessions judge.*—The prisoner is a Fukeer, and a few months before the perpetration of the murder, had brought the prosecutrix, a Hindoo widow, and her son (the deceased) to live with him. They lived together with another wife of the Fukeer in a hovel near Meer Asgur Allee's house, and when the Fukeer was from home, the women appeared to have been in the habit of living on the premises of Asgur Allee.

Prisoner,  
Fukeer, con-  
victed of ag-  
gravated cul-  
pable homi-  
cide, and or-  
dered to be  
imprisoned for  
life in the Ali-  
pore jail with  
labor and  
irons.

The prosecutrix deposes that on the 16th, the prisoner started with her boy with the alleged intention of going to a town called Deobagh, she went to the house of Asgur Allee, on the following morning, the prisoner sent for her to the hovel, where she found the boy in a dying state. The prisoner at each stage of the trial has asserted that whilst he was engaged gathering mangoes, the boy amused himself playing with a tame monkey chained near the hovel, that the animal suddenly flew at the child, and before he, the prisoner, could drive him off, had inflicted the injuries which terminated fatally.

There were no witnesses to the murder. The evidence of witnesses Nos. 1 and 2,\*

\* No. 1, Sheikh Meher.

„ 2, Dgoo Fukeer.

is to the effect that prisoner and the child spent the night of the 16th in the verandah of a deserted *gunjah* shop, and during the night witnesses were disturbed by the prisoner's beating the boy, but before day-break they had left the place.

† No. 13, Rutton Kareegur.

„ 14, Bagoo Kareegur.

There are also witnesses,† who depose that on the morning of the 17th, pri-

soner had accounted for the helpless condition of the child by saying that he was ill and made no mention of the monkey. The gomashtah of Moulvy Abdool Allee, the zemindar living near the scene of the murder, immediately sent the prosecutrix,

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Case of  
KACHAEE  
FUKERR.

the prisoner and the dying child to the police, as they considered that the injuries could not have been inflicted by a monkey.

Though there are no eye-witnesses to the murder, yet from the circumstances of the case and the answer of the prisoner, it is clear that the boy was killed either by the prisoner or by the monkey. It is highly probable that the monkey was large and strong enough to have killed a weak child, but I am firmly convinced from the nature of the wounds that the child was not so killed.

The civil surgeon deposes that two of the ribs were fractured and that there were no marks of bites on the body, it is not probable that this injury to the ribs was inflicted by a monkey, still it might have been so done, but I think it beyond question that if an enraged monkey had attacked the boy, he would have bitten him more or less severely, and the mark of a bite would be very easily recognised.

The prisoner stated in his defence before the police, the magistrate, and in this court that two women (Boodey and the wife of Sha Saheb,) were near the place where the boy was attacked, and several others had come up afterwards.

The woman Boodey, does not support this statement, and the wife of the Sha Saheb (name unknown) has not been brought before the court.

There appeared at one time a doubt as to the prisoner's sanity; but beyond the fact of his being a *gunjah* smoker and therefore liable to occasional fits of violent excitement, it does not appear that he can be considered insane.

The law officer acquits the prisoner, and considers the crime not proved.

I consider him guilty on violent presumption of the murder of deceased and recommend that he be sentenced to transportation for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The record shews that the prisoner took the deceased with him to mouzah Deobagh; and on the night previous to the death of the deceased, the prisoner was seen beating the child, and holding him down by the neck, in the *verindah* of a *gunjah*-dealer's shop in Nyabaree; and that the prisoner brought him on the following day in a dying state to his own hut. To some of the neighbours, who met him on his way home carrying the child, he said it was suffering from a stroke of the wind; and to others, who passing his hut, saw the child lying down, he said that the boy was suffering from fever; and to the deceased's mother the prisoner said that a tame monkey had scratched and bitten the deceased. The improbability of this last story is shewn from the civil surgeon's evidence after examination of the body; and the plea is unsupported by any proof. The deceased's mother cohabited with the

prisoner, and the boy was placed by her, and evidently was always considered by the prisoner, as under his charge; and it was his bounden duty to take care of the child. What were the motives which led the prisoner to beat the child are not ascertained; but no provocation on the part of the deceased can be traced in the evidence, and we have no doubt, from that evidence, that the child's death was caused by the ill treatment he received at the hands of the prisoner. We therefore convict the prisoner of aggravated culpable homicide, and sentence him to be imprisoned for life with labor and irons in the Allipore jail, considering that a more suitable punishment, for his peculiar case, and habits, than transportation.

1856.

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Case of  
KACHAEE  
FUKER.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

SHEIKH SHADHOO (No. 33,) BEHALEE SHIKDAR (No. 34,) OLEE MOOLLA (No. 35,) SHEIKH LALL (No. 36,) AND SHEIKH CHAND (No. 37.)

Sylhet.

1857.

CRIME CHARGED.—1st count, prisoner No. 33 of wilful murder of Shadhoo *chowkeedar* and 2nd count, prisoners Nos. 34 to 37 being accessaries after the fact contained in the 1st count at the end of April, or in the first part of the month of May 1855, corresponding with some day of Bysack 1262 B. S.

February 9.

Case of  
SHEIKH  
SHADHOO and  
others.

CRIME ESTABLISHED.—No. 33, culpable homicide and Nos. 34 to 37 accessaries to culpable homicide.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge, on the 16th September, 1856.

Appeal re-  
jected; pri-  
soners being  
proved guilty  
of the charge;  
the death of  
the deceased  
being caused  
by prisoner  
No. 33, Sheikh  
Shadhoo.

*Remarks by the officiating sessions judge.*—This case took place more than a year ago, but no information was given at the thannah until the 23rd of July last; the circumstances of the case are as follows: Lung Bee, the wife of *Shadhoo chowkeedar* deceased was ill and was taken to her father's house, from whence she went to a *Moollah's* house in order to procure medicine for herself. *Shadhoo chowkeedar* visited his father-in-law's house and abused his wife for visiting the *Moollah's* house, and attempted to beat her, at night the villagers assembled in Behaleechowkeedar's (prisoner No. 34's) house and remonstrated with the deceased for abusing his wife; Kurreem Mirdah, witness,

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Case of  
SHEIKH  
SHADHOO and  
others.

Sheikh Shadhoo (prisoner No. 33's) uncle asked the deceased the reason of his abusing his wife, on which a quarrel ensued and abusive language was used on both sides; Sheikh Shadhoo (prisoner No. 33) gave the deceased a blow which made his nose bleed; he returned to his house and from the effects of the blow he died on the following night; all the prisoners concerted together and declared that sickness was the cause of the deceased's death; they buried the corpse and concealed the fact. Witnesses Nos. 1 and 2 deposed, that prisoner No. 33 kicked the deceased, and from the effects thereof he died; prisoner No. 33 confessed to having kicked the deceased and the remaining prisoners before the police and the magistrate confessed to having buried the corpse of the deceased and having concealed the fact. The confessions of all the prisoners taken before the police and the magistrate have been duly attested by the subscribing witnesses thereto. Under all the circumstances of the case, I do not consider that the blow inflicted by prisoner No. 33 upon the deceased was with the intent of killing him. I therefore, in concurrence with the verdict of the assessors, convict prisoner No. 33 of culpable homicide and the remaining prisoners of being accessory in the above crime and sentence them as follows: No. 33, to imprisonment for three years and to a pay a fine of rupees 30 and Nos. 34 to 37 each to imprisonment for one year and to pay a fine of rupees 10 on or before the 1st proximo, or in default of payment to labor until the fine be paid, or the term of their sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley). The prisoners' appeal from the orders of the sessions judge on the following grounds, 1st, the prisoner, Shadhoo, No. 33, denies that the deceased died from the effects of the kick he gave him, because the deceased was able to go about his work as usual for three days after; 2nd, that the mofussil confession was extorted through fear of ill-treatment. The other appellants deny having wilfully concealed the death of the deceased, which they attribute to cholera; and plead that they were induced to confess in the mofussil, by the hopes held out to them by the darogah of being released, if they made a full confession.

The record shows that owing to a dispute, which took place in the house of Behalee Shikdar, prisoner No. 34, between the deceased and Kureem Meerda, in consequence of the deceased's abuse of his wife, Musst. Lung, the prisoner, Sheikh Shadhoo, enraged at the language of deceased, ran up to, and kicked him between the eyes and on the nose, as he was sitting, and thus the deceased's head came in contact with the post against which he (the deceased) was leaning. Blood began to drop from his nose; and the parties then separated; but the next day, the deceased came to Behalee's house, and demanded an inquiry

by the villagers into Sheikh Shadhoo's conduct. Deceased then went home and died that night, blood and mucous matter having issued from the nose and mouth. The other prisoners, by the advice of Ruheem Cauzy, buried the body without intimation to the police, and it was given out that the deceased had died of cholera.

In his deposition before the sessions judge, Kootoob Mollah, one of the witnesses to the mofussil confession of the prisoner, Shadhoo, states that the prisoner was threatened by the darogah, and thus induced to confess. The sessions judge appears to have taken no notice of this; nor to have examined the other witness particularly on this point. The prisoner, however, admits in his petition of appeal to this Court that he did kick the deceased, and that he died; but urges that he did not die from the effects of the kick. That fact is, however, independently proved by the evidence of the eye-witnesses. We therefore see no reason for interfering with the order of the judge, and reject the appeal.

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Case of  
SHEIKH  
SHADHEE and  
others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND MUSST. JEERA

*versus*

SHEIKH NAYER (No. 1,) SHEIKH KOOTOOB (No. 2, APPELLANT,) SHEIKH DENGRA MOOLLAH (No. 3, APPELLANT,) TEPAY SHUSTEE (No. 4, APPELLANT,) SHEIKH SADEE (No. 5,) SHEIKH GONDIE CHOWKEEDAR (No. 6,) SHEIKH AREEZ (No. 7,) SHEIKH AROZOOLLA (No. 8, APPELLANT,) AND SUNA MANJEE\* (No. 9.)

Sylhet.

1857.

February 9.

Case of  
SHEIKH

KOOTOOB and  
others.

CRIME CHARGED.—1st count, Nos. 1 and 2, wilful murder of Musst. Soonder Bee; 2nd count, Nos. 3 to 9, being accessaries after the fact contained in the first count, at the end of May, or in the first part of June, 1854, corresponding with some day of Jyete, 1261, B. S.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 17th September, 1856.

Prisoners convicted of culpable homicide and accessaryship on confessions and circumstantial proof. The sentence of prisoner No. 2 mitigated.

\* Acquitted by the lower court.

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Case of  
SHEIKH  
KOOTOOB and  
others.

*Remarks by the officiating sessions judge.*—This occurrence took place in May or June, 1854, and the fact was concealed until August last. Prisoner No. 6, gave information at the thannah of Gowain Ghaut. The darogah of the Jynteah thannah was deputed to hold an investigation and he succeeded in bringing the case to light. The history of which is as follows :—

Soonder Bee, the deceased, was the wife of prisoner, No. 1. She was ill, committed a nuisance (i. e. dirtied) in the house, which caused a dispute between the deceased and her husband (prisoner No. 1,) who seized a *dao* and struck the deceased with it on the face and neck, the blow severed an artery, and from the effects of which the deceased died during the evening of that day; the rest of the prisoners assembled during the night and being bribed by Nayer (prisoner No. 1,) concealed the fact and buried the corpse of the deceased.

Prisoner, No. 1, before the police and the magistrate, confessed the charge preferred against him, and prisoners Nos. 2, 3, 4, 5, 6, 7 and 8, confessed that they had been bribed and had in consequence hushed up the case. The confessions of the prisoners have been duly attested by the subscribing witnesses thereto, witness No. 1, deposed to having seen the deceased with her throat cut and other witnesses, viz. Nos. 10 to 12, corroborated the statement made by witness, No. 1. The *dao*, with which the crime was committed, was produced by prisoner, No. 1, before the police.

Prisoner No. 1, pleads that his wife, the deceased, was intimate with one Sadeer, but failed to establish the fact.

I concur in the verdict of the assessors and convict prisoner, No. 1, of culpable homicide and prisoners, Nos. 2 to 8, of being accessaries after the fact in the above crime; prisoner, No. 2, is the brother of prisoner, No. 1, and resides in the same house, his guilt is greater and I award to him a heavier punishment, and acquit the prisoner, No. 9, for want of sufficient proof, and sentence the prisoners as follows.

No. 1, to seven years' imprisonment with labor in irons; No. 2, to three years' imprisonment without irons and to pay a fine of Rs. 30, on or before the first proximo, or in default of payment to labor until the fine be paid or the term of his sentence expire; and Nos. 3 to 8, to one year's imprisonment each without irons and to pay a fine of Rs. 10 each, on or before the first proximo, or in default of payment to labor until the fine be paid, or the term of their sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal on the ground that the acting darogah of Jynteahpore got up this case with a view to obtain a name as an active officer; that the case was not one of homicide; but that deceased died from natural causes. We have gone through the record, and find that the con-

fessions are deposed to have been voluntarily given. Sheikh Nayer, himself, the principal, has not appealed; and taking his detailed narrative of the occurrence, as on the record, together with the evidence of neighbours, who depose to the cause of the quarrel, and to its having twice before led to prisoner assaulting deceased; to the deceased having been seen by them, dead with her throat cut, and to the production of the *dao* by prisoner No. 1;—we see no grounds to interfere with the sentence. We observe, however, that although prisoner, No. 2, is the brother of prisoner, No. 1, and resides with him, it is not on the record that he was present in any way at the occurrence, or that he was more of an accessory than the others, except that the body was buried in his part of the premises; (but still before the others;) and this is not stated as the ground for the greatly enhanced punishment which the sessions judge awards to this prisoner. We reject the appeal; but sentence this prisoner, No. 2, to eighteen months' instead of three years' imprisonment; and the others as proposed by the sessions judge.

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February 9.

Case of  
SHEIKH  
KOOTOOB and  
others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT, SACHEERAM CHUNG AND OTHERS

*versus*

SHEIKH RUHEEMUDDEE (No. 18,) KASHEE MAHOMED (No. 19,) SHEIKH RUZZUB (No. 20,) OMAR DERAZ\* (No. 21,) AND SHEIKH JAUN MAHOMED\* (No. 22.)

Dacca.

1857.

CRIME CHARGED.—1st count, illegal assembly and riot attended with the culpable homicide of Ramshurn Chung, Bearer; 2nd count, riotously attacking Cheekundee bazar and plundering the property of Rughoonath Sha, to the amount of Rs. 268-8, likewise that of Rughoonath Boneek to the amount of Rs. 61-11, likewise that of Hurreechurn Sha to the amount of rupees 5, 14 annas, likewise that of Bashee Sha to the amount of rupees 7, 6 pie, likewise that of Boodaram Sha rupees 4, 15 annas 6 pie, total 348 rupees 1 anna; 3rd count, keeping the property in their possession, knowing the same to have been obtained by plunder.

February 9.

Case of  
SHEIKH  
RUHEEMUD-  
DEE and  
others.

Riot, homicide, and plunder, connected with disputes between Doodoo Meeah and Noyuh Meeah. Appeal rejected.

CRIME ESTABLISHED.—Riotously attacking Cheekundee bazar, in which Ram Shurn Chung was killed and plundering property of the prosecutors to the amount of rupees 348,

\* Acquitted by the lower court.



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Case of  
SHEIKH  
RUHEEMUD-  
DEE and  
others.

1 anna and possessing the same, knowing it to have been obtained by plunder.

Committing Officer.—Dubbeeroodeen Mahomed, deputy magistrate of Moonsheegunge.

Tried before Mr. R. Scott, officiating sessions judge of Dacca on the 6th September, 1856.

*Remarks by the officiating sessions judge.*—The prisoners are charged with riot attended with culpable homicide and plunder, and from the confessions of Nos. 18 to 20 in the mofussil and of No. 19 before the deputy magistrate, corroborated by the testimony of witnesses\* to the production of the plundered property, there can be no doubt of their guilt.

\* Nos. 17 and 19.

Doodoo Meeah and Noyah Meeah are rival sectarian leaders, and both zealous in the propagation of their peculiar tenets. They are also both under the imputation of having occasional recourse to compulsory measures in order to gain proselytes.

For some days previous to this outrage there had been unusual excitement in the place; it was reported that Noyah Meeah and his people intended to plunder the town, this led to an assemblage of *lattyals* of the opposite faction. On the night of the 20th May, about one hundred or more men attacked the town, plundered five houses and speared Ram Shurn. On the next day Nubbo Kishen Dey lodged information in the thannah against Noyah Meeah and his people. The darogah of Moolfutgunge arrived at the town and reported to the deputy magistrate of Moonsheegunge that the case was a very difficult one, as he had received information that the outrage had been committed by the people of Doodoo Meeah, with the express purpose of ruining Noyah Meeah and his faction. He therefore begged the deputy magistrate, would personally carry on the investigation. The deputy magistrate refused to come on plea of illness. The darogah then took such evidence as Doodoo Meeah's people brought forward, and there were soon found eye-witnesses to accuse Noyah Meeah and many of his nearest relatives with having been personally in the outrage.

All the accused denied participation in the outrage. On the 26th May, the darogah of Rajabaree arrived on the spot, and his arrival gave a turn to the investigations. The plundered parties now owned that their assailants were a gang of Doodoo Meeah's people, and evidence was procurable on this side as easily as it had formerly been on the other. On this occasion it was, however, supported by the confessions of the prisoners and by the production of the property. Many other prisoners were apprehended and discharged. I consider it established that the outrage was committed by the people of Doodoo Meeah. They were accused from the beginning. It is true that the

plundered parties did not accuse them, two of these people are alleged to have lost property to the value of 5 rupees and 7 rupees respectively, and they are the only people who pretend to have recognised any of the rioters. There is strong reason to suspect that these men were brought by the real culprits to prove the case against Noyah Meeah's faction.

The property recovered is of nature that admits recognition.

The law officer found the prisoners guilty of riot, in which Ram Shurn Chung was killed, and on the 2nd and 3rd counts. I concur in the finding, and sentence the prisoners each to seven years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The three prisoners appeal, urging that the prosecutors in their first statements to the police had themselves accused Noyah Meeah's people; that the darogah of Moollutgunge reported that Noyah Meeah's people were the guilty parties; that there was a discrepancy as to the alleged hour of the attack (some saying it was at 4 *dondos* of the night, while others stated that only that portion of night remained;) that their (the prisoners') confessions were extorted by the darogah last deputed; (of Rajabaree;) that Kanaye Jogee left most of the property to be kept in their houses, and that some was their own; and that the evidence for the defence exculpated them.

We have carefully gone through the whole record, and do not consider the grounds of appeal valid.

It is true that the prosecutors and their witnesses at the police at first stated the attack to be one by Noyah Meeah's people. But the information of the police, and the evidence there, were from Doodoo Meeah's people, and the tenor of their statements to the police, especially the verbatim manner of their deposing to Noyah Meeah and many of his near relatives, each and all, being personally on the spot and taking an active part in the occurrence, leads us to discredit them. Entirely irrespective, however, of the contradictory statements of the prosecutors to the police, we find the following facts sufficiently established, i. e. that some of Doodoo Meeah's chief agents and people were collected at the bazar the evening before, and armed; that they set forth their apprehension of an attack from Noyah Meeah's people, but none of the latter are shewn to have been, then or afterwards, there at all; that the prisoners all voluntarily confessed before the darogah (Ruheem and Rujub at their own houses, and Kasee Mahomed at the thannah) and all on the day of apprehension, and simultaneously with the discovery of the plundered property with them; that Kasee Mahomed repeated his confession before the deputy magistrate; that the plundered property was identified as that of prosecutors; that there is no proof of its having been placed there by

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Kanaye Jogee, or by improper means ; and that none of the pleas urged by prisoners in their defence are proved by the witnesses called for that purpose.

At first sight, it would seem unlikely that Doodoo Meeah's people should attack the bazar of which he was a part-sharer ; but it is on the record, that there was an idea of the owner of the far larger share farming it to Noyah Meeah, which would afford a motive for the outrage. In the same way it would seem unlikely that Doodoo Meeah's people would kill the deceased, who had given evidence against Noyah Meeah. But unfortunately experience shews that, in such a case as this, when the primary object is injury to the opposite party, either by a false case against them or otherwise, human life, especially that of one of another creed and sect, is not always regarded.

We reject the appeal.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

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GOVERNMENT

*versus*

TAJ MOHOMED MUNDUL (No. 29,) SOBAN MUNDUL (No. 30, NON-APPELLANT,) RUNJEET PYEKAR (No. 31,) KEENAH PRAMANICK (No. 32,) BOHOR MUNDUL (No. 33,) JAHANBUX MEER SHEEKAREE (No. 34,) GHEENAH PRAMANICK (No. 35,) JATTRA PRAMANICK (No. 36,) AND JHOOMUN SINGH, POLICE BURKUNDAS (No. 37.)

Rungpore.

1857.

February 10.

Case of  
TAJ  
MOHOMED  
MUNDUL  
and others.

CRIME CHARGED.—1st count, prisoners Nos. 29 to 36, with riot attended with culpable homicide of Jamal Pramanick and slightly wounding of Chhokoo Pramanick ; 2nd count, being accomplices in the above riot attended with homicide and wounding ; 1st count, No. 37, being an accomplice in the above crime ; 2nd count, aiding and abetting by his presence as a police burkundaz, in the above riot attended with homicide and wounding.

Appeal rejected ; the evidence for the prosecution proving the guilt of the prisoners ; and their defences and *alibis* not being substantiated.

CRIME ESTABLISHED.—Prisoner No. 30, riot attended with culpable homicide of Jamal Pramanick and slightly wounding of Chhokoo Pramanick. Prisoners Nos. 29 and 31 to 36, being accomplices in riot attended with culpable homicide of Jamal Pramanick and slightly wounding of Chhokoo Pramanick and prisoner No. 37, being an accomplice in the above crime and with aiding and abetting by his presence as a police burkundaz in the above riot attended with homicide and wounding.

Committing Officer.—Mr. J. C. Dodgson, joint-magistrate of Bograh.

1857.

Tried before Mr. R. H. Russell, sessions judge of Rungpore, on the 8th September, 1856.

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Case of  
TAJ  
MOHOMED  
MUNDUL  
and others.

*Remarks by the sessions judge.*—It appears from the evidence, that there existed a dispute regarding some newly formed lands in Paroollee *bheel*, between Keenah Pramanick prisoner No. 32, of the village of Noseepore, and Jamal Pramanick (deceased) of the village of Tolotollah. At the beginning of the year, the dispute was amicably adjusted by the division of the disputed lands between Keenah and Jamal, who proceeded to sow their respective allotments.

On the 15th June, Jamal was cutting his crops of *dhan* in Paroollee *bheel*, about 10½ A. M. when a large party came from the villages of Noseepore and Konabaree and commenced cutting the *dhan*, they were accompanied by Taj Mohomed prisoner No. 29; Jhoomun Singh burkundaz prisoner No. 37, stationed at the *ghatty* in the village of Noseepore, and a party of men armed with *lattees*.

Jamal went into the village to call his neighbours to help him to save the crops. A party of eight or ten returned with him to the *bheel*, and seeing a person standing by Taj, in the uniform of a police burkundaz, Jamal and Chhokoo witness No. 8, went forward and called on him for protection. He remained silent and passive, when Taj ordered that the parties who were calling out, should be beaten.

On this Soban prisoner No. 30, rushed forward with a *lattee*, with which he struck Jamal on the forehead, felling him to the ground, as he was in the act of falling, Runjeet prisoner No. 31, struck him again on the left shoulder, and Keenah prisoner No. 32, struck a third blow on his loins as he lay on the ground, Chhokoo on remonstrating, was attacked by Bohor Mundul prisoner No. 33, Jahanbux prisoner No. 34, Gheenah prisoner No. 35, and Jattru Pramanick prisoner No. 36, and knocked down. Seeing the fate of those most advanced, the rest of the Tolotollah, villagers retreated. The Noseepore party having cut the crop, carried it off, when the Tolotollah party returned and found Jamal senseless and speechless with his skull fractured, and Chhokoo with sundry contusions, and slight injuries on different parts of his person. They were brought home, and Modee Akhund witness No 1, sent to the thannah to give information of the occurrence.

He arrived on the same day, and the darogah reported that the mohurris had started for the spot the same evening; he did not arrive, however, till the following evening, though the distance is but eight miles, and it appears from the evidence of Modee Akhund, that in consequence of a storm he did not leave till past ten A. M. on the following day.

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He found Jamal to be speechless and senseless, and sent him on the following morning to the station. Jamal died on the way.

The medical officer found on the head of Jamal Pramanick a ragged confused wound three-half inches in length, and the bone exposed; on removing the scalp the right parietal bone and the frontal bone were found extensively fractured, a portion of the latter about an inch square being depressed, a bloody coagulation was found pressing on the brain; he was of opinion that the injury was caused by a blow from a heavy stick, and was doubtless the cause of death. The only other mark was on the left shoulder, where the skin had been abraded.

Chhokoo's injuries were slight; on hearing from the mohurrir of the serious nature of the injury received by Jamal, the darogah proceeded to the spot, but was unable to make a plan of the scene of the riot in consequence of the place being inundated. The mohurrir had neglected to make a plan as he might have done when he first arrived there. The want of this plan is to be regretted. The survey map does not show the *bheel*, but it shows the position of the several villages mentioned in the evidence, and is therefore useful.

The accompanying rough sketch copied from the map, will serve to show the relative positions of the villagers of Noseepore and Tolotollah, and the nature of the boundary line between them. It cannot be ascertained exactly where the dispute actually took place, but it would appear to have been somewhere towards the south-west corner of the Tolotollah boundary.

From the extreme north part of the village of Noseepore, to the south-west corner of Tolotollah, is a distance according to the map, which is on the scale of a mile to the inch, of two and half miles, and from Noseepore *hat* to this same point, of two and half miles in a straight line. From the *hat* to the nearest point on the boundary line, is less *than* two miles.

Taj Mohomed prisoner No. 29, pleads that he was at the time of the occurrence in the house of Chhenoo Pramanick witness No. 19, in the village of Noseepore. His witnesses depose, that he was from seven and half A. M. to noon in Chhenoo's house. But Chhenoo can give no reason for his having gone there, or remained there so long.

Soban Mundul prisoner No. 30, pleads that early in the morning of the Sunday, on which the riot occurred, a party of the Tolotollah villagers came to his field in Tengramaree *bheel*, and cut his Teel crop. He came in at once to Bograh to lodge a complaint and remained in the house of one of the mookhtars of the court. On Tuesday he was returning home when he was arrested by the thannah mohurrir. He brings witnesses, however, only to the alleged carrying off of his crops, and not to his having come in to Bograh. The *alibi* urged is therefore totally unsupported.

Runjeet Pyekar, prisoner No. 31 alleges previous enmity on the part of the witnesses, and calls evidence to show that he was at Kottapara at the time of the riot. Four witnesses depose to having seen him early in the morning, *some* in the fields south, and some west of Noseepore and hearing from him that he intended to go to Kottapara. One witness speaks of having met him in Joist last. One only has been brought to show that he actually went to Kottaparah. This witness, No. 35, Nuboo Mundul, is not a native of that village, but deposes that he saw him in his mulberry field on the side of the road passing through the village of Kottaparah. He, however, can give no reason for remembering the date of this casual rencounter.

Keenah Pramanick prisoner No. 32, pleads that he came in to Bograh, on the day of the riot, to complain of his *dhan* having been cut. Before the joint-magistrate his defence was, that he was at home, and he called witnesses to prove this. Either the witnesses then called by him, or those now brought forward must have perjured themselves.

Bohor Mundul prisoner No. 33 pleads that he was at work in his *dhan* field in Elingee *bheel* the whole of the day on which the riot took place. Elingee *bheel* is not to be found in the map, but it is stated to be east of Noseepore and Paroollee *bheel* to be east of it. There can be no great distance between the two *bheels*. The witnesses can give no good reasons for remembering the exact date on which they were with the prisoner there.

Jahanbux prisoner No. 34 pleads that he came in to Kalicatollah *hat* Bograh, on the Sunday in question with Bhola (witness No. 53), slept in the house of Neamut, and returned home the following day. Had this been true, Neamut and Mahata, witnesses Nos. 51 and 52 would doubtless have been summoned by him to give evidence before the joint-magistrate. Before that officer, however, the prisoner pleaded that he had come in to the *hat*, but returned home the same evening, and called witnesses to prove this. In this defence he made no mention whatever of the three new witnesses now brought by him.

Gheenah Pramanick prisoner No. 35 pleads, that he was on the Sunday in question at Korna *hat*, his witnesses support his statements, the only question is whether their evidence is to be preferred to that for the prosecution.

Jattra Pramanick prisoner No. 36 pleads that he was feeding his cows in Dholee *bheel* on the day of the occurrence. This *bheel* is stated to be from 1 to 1½ *coss* south-east of Noseepore, and Paroollee *bheel* to be ¾ of a *coss* still further to the south-east. This cannot be the case. If the *bheel* in question is one *coss* in a south-east direction from Noseepore, it can be no great distance from the scene of the riot. That the witnesses, who were engaged in their own work in their fields should have kept

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1857. their eyes constantly upon him, without any reason for so doing, is not probable.  
 February 10. Jhoomun Singh burkundaz of thannah Bograh pleads that he was at his *ghatty* in the village of Noseepore, the whole of the Sunday in question. The *ghatty* is east of the *hat* and therefore nearer to the scene of the occurrence. One witness Shureutoollah No. 64 deposes that he was in the zemindary cutcherry all day, he saw from thence, that the prisoner never left the *ghatty*, why he should have watched him all day long, is not explained. The chowkeedars do not prove his case. The other witnesses who depose to having casually seen him at the *ghatty*, about the time of the riot are now brought forward for the first time.

Case of  
Taj  
Mohomed  
Mundul  
and others.

The law officer finds prisoner No. 30 Soban, guilty on the 1st count, and declares him liable to *kaffara* and *decut*.

The other prisoner he finds guilty on the 2nd count, (Jhoomun on the 1st and 2nd) and declares them liable to *tazeer*.

I consider it to be fully established, that the prisoners did come to cut by force the crops of the deceased and other villagers of Tolotollah. That they cut not only those on the lands forming the previous subject of dispute, but also on other lands lying to the eastward of them; that the actual assault took place on the lands thus lying eastward, and therefore clearly within the boundaries of the village of Tolotollah; that Jhoomun Singh burkundaz came with the Noseepore party stood by Taj Mundul when he gave the order to beat the deceased and others who were remonstrating, and never interfered, though the Tolotollah villagers expressly applied to him for protection; that he went away with the Noseepore party, and took no steps to apprehend the rioters, I consider him therefore to have clearly acted as an accomplice throughout.

The Tolotollah villagers on the other hand appear to have kept strictly within the law, they applied to the police officer for protection, and did not attempt to oppose force by force.

If the statement of Soban prisoner No. 30 be true, and the statement made by Modee Akhund at the thannah, would seem in some measure to confirm it, the attack on his field by the Tolotollah villagers in the morning, may have been the immediate cause of the counter-attack on the crops in Paroolee *bheel* later in the day, but can afford no justification of this forcible attempt on the part of the villagers of Noseepore to revenge an alleged injury to one of their number.

An interval of three hours must have elapsed between the two events.

The evidence for the defence is for the most part exceedingly weak, and in no case is it, in my opinion, to be preferred to that for the prosecution.

It was not necessary for the joint-magistrate to commit the

prisoner, on the 2nd count. As being charged as principals, they might have been convicted as accomplices.

In concurring with the law officer, however, I convict Soban prisoner No. 30 on the 1st count of the indictment, and sentence him under all the circumstances of the case, to imprisonment for 7 years with labor in irons.

The remaining prisoners, Taj Mohamed Mundul No. 29, Runjeet Pyekar No. 31, Keenah Pramanick No. 32, Bohor Mundul No. 33, Jahanbux No. 34, Gheenah Pramanick No. 35 and Jattrra Pramanick No. 36 on the 2nd count, as accomplices in the riot attended with the culpable homicide of Jamal Pramanick and wounding of Chhokoo Pramanick, and sentence them to imprisonment with labor in irons for five years.

Jhoomun Singh burkundaz prisoner No. 37, I convict on the 1st and 2nd counts of the indictment against him, and sentence him likewise to five years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners, with the exception of Soban Mundul, have appealed. Prisoners, Nos. 29, 31, 32, 33, 35 and 36, plead in this Court that they were at home at the time the affray took place, and that this fact is proved by the witnesses, whom they called for the defence. The plea thus urged in this appeal differs from the defence made by them at the trial, where each of the prisoners stated that he was at some other particular place named by each; but the *alibis* then pleaded were not satisfactorily supported by the evidence.

The prisoner, Jhoomun Singh No. 37, urges in appeal that he was not recognised either by the wounded man or by the son of the deceased; and that he was, during the whole day, at the *ghatty*, as proved by the witnesses, whom he summoned. Though the prisoner is not mentioned by name, he has been identified by several of the witnesses, who saw him with Taj Mohamed at the time he (Taj Mohamed) gave the orders to the rioters. He thus countenanced the riot by his presence; though he took no other active part in it; but considering his position as the police officer stationed at mouza Noseepore, whence the rioters came, this does not diminish his guilt. The evidence of his witnesses, (chowkeedars and a peada of the zemindar's cutchery) that he was seen by them during the whole day at his *ghatty*, is unworthy of credit, both from its tutored tenor, and its being directly contradicted by the better evidence for the prosecution.

Prisoner, Jahanbux, No. 34, repeats the statements made by him on trial before the sessions judge. The *alibi* pleaded by the prisoner is not supported by the evidence, and the defence made by this prisoner at the trial differs from the statement made by him to the magistrate. We reject the appeal.

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Case of  
TAJ  
MOHOMED  
MUNDUL  
and others.



## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*KANTO DULLYE (No. 6,) MUSSAMUT PEAREE (No. 7.)  
TONOO DULLYE (No. 8) AND MOTHOO DULLYE  
(No. 9.)

Midnapore.

1857.

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Case of  
KANTO  
DULLYE  
and others.

CRIME CHARGED—1st count, wilful murder, in having on a certain date between the 14th July and the 4th August, 1856, corresponding with the 32nd Assar and 21st Srabun 1263, by means of prisoner No. 7 administered such medicines for the purpose of procuring abortion to the deceased Jutee Bewah, that she died from the effects thereof; 2nd count, with being accessories to the above crime after the fact.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 19th November, 1856.

*Remarks by the officiating sessions judge.*—The circumstances of the case are as follows.

On the 14th July last, one Modon Mullick informed Sakir Meer, the Phareedar of Bindabun Chuck, that Jutee Bewah was three or four months gone with child. The Phareedar proceeded to the abode of the male prisoner's at Bindabun Chuck, and demanded the production of the woman. He then reported to the darogah their refusal to comply with his order and his own suspicion that they intended to destroy the fœtus of the woman. The darogah on this, issued an order to Boro Modoo Singh burkundaz of pharee Shamgunge and Jadhoo Kotal to bring the principal men of the village to him. Boro Modoo Singh swears he never saw that order; Jadoo Kotal appears alone to have executed it, and to have taken six persons including the male prisoners, on the 22nd July, to the darogah, before whom they executed an agreement to produce the woman in four days; but nothing of all this was reported to the magistrate.

On the 28th July Sakir Meer again brought the matter to the notice of the darogah who issued another order to the Boro Modoo Singh burkundaz to find the woman.

He seems to have overlooked, that his first order was executed by Jadoo Kotal alone, and that the burkundaz had taken no notice of it.

On the 4th August, after a further lapse of eight days, the burkundaz reported his having heard from Kanto Dullye prisoner

No. 6, that Jutee had died and her body had been thrown into the river, by order of the principal men of the village.

All these proceedings, were, no doubt, illegal and against expressed injunctions. The darogah should have immediately taken orders from the magistrate how to proceed, but he made no report whatever until the 6th August. On that day the darogah arrived at the village of Bindabun Chuck, and found the four prisoners in the custody of the burkundaz. The female prisoner, admitted having administered medicine to the deceased; and the others to having thrown her body into the river.

They repeated their confessions before the magistrate.

The evidence against the prisoners consists of their own confessions both before the police and the magistrate. The witnesses, adduced to attest the former, give confused and unsatisfactory evidence, but this I mainly attribute to the darogah's having selected poor and ignorant men, instead of respectable and intelligent persons for the purpose.

The confessions before the magistrate, however, are distinctly proved, and there is no reason to doubt the truth, or that they were voluntary.

The confession of Pearee is clear and distinct, that she gave medicine, not once, but twice, to cause abortion, and that the second dose had the effect; that the woman lived for four days after it was administered. The deceased's paramour Haree Hajra, she adds, gave her some restoratives and subsequently some spirituous liquor, after taking which, Jutee became suddenly more ill, and died on a Friday night. The other prisoners distinctly confessed that they had thrown the body into the river, knowing what had occurred. In fact their line of defence in this court is tantamount to the same. The body was not recovered. There is just the possibility, that the ignorant use of what were deemed restoratives was prejudicial, but this cannot be taken to extenuate the offence of the prisoner, in whose house, certain articles of medicine were found, two of which have been declared by the assistant surgeon to be irritants capable of causing abortion. An intention to take life is not presumable against this prisoner.

The *futwa* of the law officer declares all the prisoners liable to *tazeer*; concurring in this conviction, I find prisoner No. 7 Pearee guilty of knowingly administering medicines to Jutee, thereby causing abortion which resulted in her death; and the prisoners Kanto Dullye No. 6, Tonoo Dullye No. 8, and Mothoor Dullye No. 9 of being accessories after the fact.

Taking all the circumstances into consideration, the known frequency of the offence, the facility with which detection is eluded, the fearful trifling with life, and the fatal result in this case, I would recommend that the prisoner Pearee be sentenced

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and others.

to 14 years' imprisonment with labor suited to her sex and that the other three prisoners be each sentenced to 5 years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It is clearly proved that the female prisoner, No. 7, administered drugs to the deceased, with the intent to procure abortion; and that the deceased died from the effects of them. It is also proved that prisoners, Nos. 6, 8 and 9, threw the body secretly at night into the river "Cossye," knowing that deceased had died from the above cause. The plea of these prisoners, that they did not do so with such knowledge, but merely at the instance of the heads of the village, is not substantiated.

The reasons, for which the judge recommends the female prisoner to be punished with 14 years' imprisonment, are of *general* application; while the more recent precedents of the Nizamut Adawlut shew that the punishment that has been awarded in *general* cases is not so severe. There is, however, a *peculiar* circumstance in this case, which induces us to confirm the sentence, viz., that the evidence most satisfactorily shews that the prisoner, No. 7, was in the habit of keeping drugs of the exclusive character of those used in procuring abortion. And it is a legitimate presumption therefore that she was ready at all times to afford the means of perpetrating the like grave offence. With a view therefore to deter others from similar practices, we inflict the severe sentence proposed. The sentences proposed for the other prisoners are proper. The Court, however, consider it right to observe, with reference to the connection of Haree Hajra with prisoner No. 6, and to the statement to the magistrate by prisoner No. 7, of the complicity of Anund Sawunt, the gomashtha of the village, apparent on the record of the proceedings at the mofussil police, that the magistrate does not seem to have carried out the enquiries into their guilt or innocence as fully as he should have done.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT, SHEIKH LOTUN AND OTHERS

*versus*

KAREEM SHAH.

Tirhoot.

1857.

February 11.

Case of  
KAREEM  
SHAH.

CRIME CHARGED.—1st count, wilful murder of Musst. Hiriah, deceased in shooting her with a gun, loaded with shot and ball ; 2nd count, severely wounding with a *tabar* Kurm Allee and Shah Umjud Allee with intent to murder the said Kurm Allee and Shah Umjud Allee.

Committing Officer.—Mr. H. Doveton, deputy magistrate of Baherah.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 19th November, 1856.

*Remarks by the sessions judge.*—The joint-prosecutors with the Government in this case are the husband of the deceased female, whose death was occasioned by the act for which the prisoner is brought to trial and two other persons, who were wounded by him, and the following are the facts of the case.

It appears that for some time, the prisoner, who is a Fukeer, had been endeavouring to induce the deceased, Musst. Hiriah, to form an illicit connection with him, which she, however, being a married woman and apparently of a modest and irreproachable character, refused, in revenge for which the prisoner deliberately took her life. About 4 P. M. of the date of the occurrence, which was the 13th September last, the deceased was proceeding from the house of Mahomed Yakoob, in which she served as a "*loundee*" or slave girl, in the village of Sudmulpore, in the direction of a wood-shed, the prisoner following her at a sharp pace with a gun in one hand, a kind of spear in the other and a "*tabar*," or hatchet in his waist, and on getting within about thirty cubits from her he put the spear on the ground and taking aim at the woman, shot her in the back. She fell dead on the spot and the prisoner was running away in a northerly direction by a road near which there was a mosque, from which distant about a beegah, where the woman had been shot, the prosecutor, Kurm Allee, who had been to say his prayers had just come out, he having seen the prisoner shoot the deceased and on his asking the prisoner why he had killed an innocent woman, the prisoner struck him six blows on the head (which were at first considered dangerous, but the man has since recovered) who fell senseless and the prisoner took to flight. Having got outside the village, he had reached another

Prisoner sentenced capital-ly on conviction of a deliberate murder of one, and of wounding two other persons.

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mouzah, pursued by a *posse* of people trying to secure him, at no distance from Sudmulpore, where the other prosecutor, Umjud Allee, meeting him, tried to stop him, on which the prisoner first fired a shot at him, but as the prosecutor stepped on one side, the charge missed him; the prisoner then dealt a blow at the prosecutor with his gun barrel, which, however, only just touched the prosecutor's arm and the barrel striking the ground was bent at the top. Upon this, the prisoner taking out his hatchet, struck the prosecutor a blow on his right breast and then taking to flight was eventually apprehended with his spear and hatchet on the boundary of another village, mouzah, Ekdoaree, by two burkundazes who had been sent after him.

Six witnesses\* saw the prisoner fire with his loaded gun at the deceased, who fell dead on the spot, and the last four of them with two others marginally named† saw him also wound the prisoner, Kurm Allee with his hatchet.

- No. 1, Hunoman Chowdhry.
- „ 2, Bhookul Pasban.
- „ 3, Ramdhon Saha.
- „ 4, Tofanee Gowala.
- „ 5, Bhugwan Saha.
- „ 6, Moteen Dosad.

- † No. 7, Neyamut Allee.
- „ 8, Sheikh Bhola.

- ‡ No. 6, Moteen Dosad.
- „ 10, Nazir Allee.
- „ 11, Mehur Chowkeekar.
- „ 12, Jhukree Chowkeedar.

- § No. 19, Sheikh Feroze.
- „ 20, Andanee.
- „ 21, Chuttoo.

Four witnesses‡ saw the prisoner wound the prosecutor, Umjud Allee and three witnesses§ deposed to knowing that the prisoner had been soliciting the deceased to intrigue with him and that she refused.

The witnesses to the mofussil inquest deposed that on the body was a bullet wound and the marks of thirty shot pellets near that wound.

The sub-assistant surgeon, who, in the absence of the civil surgeon, had examined the body of Musst. Hiriah thus deposed. "There was a bluish mark of contusion a little above the navel, and on dissection, I found a bullet and two or three small shots (these were produced in court) impacted in the soft parts forming the anterior wall of the abdomen, there was also extensive extravasation of blood in the cavity of the abdomen. There was also an opening on the back immediately below the two last ribs of the right side, where the bullet entered and passed through the abdomen transversely, fractured the above two ribs and the first lumbar vertebra and also ruptured the liver. I have no doubt whatever that the deceased met her death from the effects of these gun-shot wounds, the woman being otherwise a healthy person."

The prisoner pleads in this court, as he has all along done,

*not guilty*; but the testimony of the eye-witnesses who saw him first deliberately shoot the deceased solely in revenge for her refusing to intrigue with him, and afterwards wound two of the prosecutors, is clear, consistent, and satisfactory, and unrefuted by anything urged by the prisoner who, though he makes a rambling and irrelevant defence, has no witnesses to call.

I concur with the law officer, who finds the prisoner guilty of the murder of the deceased and the wounding of the two prosecutors, "Kurm Allee" and "Umjud Allee."

The case indeed is one of as wilful and premeditated murder as it has ever been my province to try, and so far from there being a single extenuating feature, the prisoner's guilt, in his unprovoked murder of the helpless woman, is aggravated by his subsequent wounding of two other persons.

I can only recommend that the prisoner be sentenced capitally.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We have perused the record of this case, and fully concur in the opinion expressed by the sessions judge. There can be no question of the guilt of the prisoner who has committed a most deliberate murder, without any apparent provocation; for though the witnesses Nos. 19, 20 and 21, depose to having heard the deceased Hiriab abuse the prisoner for wishing to have an intrigue with her, this occurred four or five days before the murder; and the prisoner, even if he heard her words, was not apparently provoked thereby; and if it were so, those words originated in his own improper conduct. Moreover, the prisoner does not assign this or any other reason for killing the woman. We, therefore, as recommended by the sessions judge, sentence the prisoner Kureem Shah, to be hung.

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Case of  
KAREEM  
SHAH.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND AHIACHUND

*versus*

Behar.

KULLUR MHOWREE.

1857.

February 12.

Case of  
KULLUR  
MHOWREE.

CRIME CHARGED.—Wilful murder of Beharee Mhowree a boy aged about eight years for the sake of his ornaments; 2nd count, theft of a pair of bracelets (*kurras*) valued at Rs. 5, from the body of the deceased; 3rd count, having in his possession the said bracelets (*kurras*) knowing them to have been acquired by the wilful murder of the aforesaid boy.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Behar, at Nuwada.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 24th July, 1856.

*Remarks by the sessions judge.*—The prosecutor was the deceased's grandfather, a middle-aged energetic person, the head of the family, being also the prisoner's grandmother's cousin whose father Choa (witness No. 21,) he had brought up from his youth, and on his marriage, had set up in a separate house at a little distance from his own.

On the morning of the occurrence of 11th May last, the family accompanying the prosecutor's granddaughter's marriage procession some little distance on their way took leave and returned home. The deceased, a lad of about eight years of age wearing a pair of silver bracelets and the prisoner were with the party.

About midday the deceased was first observed to be missing, but the prosecutor hearing that he had been in the prisoner's company, felt satisfied. After a time, however, the prosecutor becoming uneasy at the deceased's continued absence, and making further enquiries, he then being absent from home at his shop some distance off, had the prisoner called. The prisoner at first denied the deceased's having accompanied him, and then admitted that he had been with him as far as the *tar* trees, and had turned back from the *nuddee*. The family became alarmed and then began searching and making enquiries in earnest in every direction. At last report was brought that the body of a child who had been murdered had been discovered, inside the Peer Puharee hills, upwards of a mile distant from the prosecutor's house. The prosecutor proceeding there at once recognised the body, as that of his unfortunate grandson. By this time the close of the afternoon had set in, general suspicion resting on the prisoner from his having been last seen in com-

Prisoner convicted of wilful murder; and sentenced capitally. Attention called to Circular Order 16th July, 1830. Explanation given as to prisoner's impediment of speech causing a deviation from it. Retrial held and resubmitted.

pany with the deceased, he was detained by Bhuttun Khan Chowkeedar witness No. 1, who met him not far from the prisoner's dwelling close to the mosque. The jemadar coming up, shortly afterwards, on the report of the event reaching the thannah there, arrested the prisoner.

The witnesses\* depose to their having seen the prisoner, accompanied by the deceased, pass along by the *tar* trees, about midday. These *tar* trees are described as not very distant from the prosecutor's dwelling about two *russees*, but upwards of the mile distant from Peer Puharee.

The body was found in a lonely place within the hills surrounded by rocks, which were stained with blood. The *mofussil inquest* and *post mortem* describe "the throat as cut from ear to ear. There was an incised wound on the stomach with the bowels protruding. Both hands were cut off at the wrists, and there were incised wounds in front of both ankle joints. The *mofussil inquest* also notes blows from stones on the eyes, &c." The cruel deed had thus been more than completed with the most savage atrocity. The hands were apparently cut off to secure the bracelets, which, being of very hard silver, would not easily open to admit of their being pulled off. I myself found them too stiff to open with the hands, and their maker Chummun Sonar (witness No. 11,) deposes, that he used pinchers when putting them on. Company's Rupees are now more in favor amongst the natives, and are used up in ornaments. An attempt seems to have been made once before to rob the child of these ornaments, when they were consequently taken off, and only worn again on the occasion of the marriage.

When Mudsoodun jemadar found the prisoner at the mosque, he was surrounded and doubtless intimidated by a suspecting crowd, as much as by any promises of release the jemadar could have held out to him. There could not have been sufficient leisure for the exercise of any improper influence over the prisoner. He had doubtless got frightened, for he began to cry when first detained by Bhuttun Chowkeedar (witness No. 1.) The tale set up by him must have emanated from himself, there was neither time or opportunity for it to have been taught him, and he has adhered to it with certain alterations to the last.

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- \* Wt. No. 9, Ugnoo Quveree.
- " " 10, Dharm Singh Mhowree.
- " " 13, Musst. Bhloodheea.
- " " 14, Buhorun.

- Wt. No. 2, Lallchand Koeree.
- " No. 3, Alum ditto.
- " No. 4, Jodhun ditto.
- " No. 5, Dr. J. B. Allan, civil assistant surgeon.

- Prosecutor Aliachund.
- Wt. No. 11, Chummun Sonar.

Aliachund, prosecutor.



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The prisoner's apprehension by the jemadar took place about evening. From the mosque the prisoner led the way to a reservoir called Puchooa, then almost dry, not far from the mosque, and about a mile distant from Peer Puharee. There, in the presence of the witnesses,\* he took out of the mud the two bracelets,

Wt. No. 6, Dahoo Soondce.  
" " 7, Kushmallee.  
" " 8, Munnoo Koeree.  
" " 9, Mudsoodun, jemadar.

identified as the deceased's.

Thence the party returned to the mosque, and after further persuasion, the prisoner led the same party back again to the Puchooa reservoir, and close by whence he

Wt. No. 9, Ungnoo Koeree.  
" " 10, Dharm Singh Mhowree.  
" " 11, Chummun Sonar.

had produced the bracelets in like manner took out of the mud, a knife stained with blood, and which Dr. Allan is of opinion was a likely instrument with which to have effected such a deed. By this time it had become late enough to use lights.

The prisoner, a youth of about twenty years of age, told the police, Boolwa Gwalla must have committed the murder, since about midday that day he had sold him the deceased's bracelets for 9 Rs. and he had hid them in the Puchooa reservoir intending to show them to the grandfather, but was apprehended before he could do so. Boolwa at the same time gave him the bloody knife, which he had buried separately in the same place as given up by him to the jemadar. So much of this tale was changed before the deputy magistrate and this court, into denying the delivery of these articles to the jemadar, and that instead, he had made them over to the deceased's father Boolakee (witness No. 20,) who before this court deposed to the contrary. Boolwa's innocence has also been always consistently maintained by the prosecution.

It is in evidence that he gave the party whilst searching, water to drink, and he appears in the calendar as witness No. 15 but as the prisoner accompanied the prosecutor during his search of the wells and was with the party when they drank at the *peepul* tree close to the mosque, and it is unknown at what particular time the murder took place, the point is a very doubtful and immaterial one. Boolwa very pertinently remarked to the deputy magistrate, though stupidly ignorant of it before this court, that "had he sold the articles as alleged he would have sold them to any one else in preference to the prisoner." The prisoner cited three witnesses, judging from his cross-examination of them, apparently with the object of proving his accusation against Boolwa, but they utterly denied all knowledge of anything in the prisoner's favor. The prisoner also pretended the prosecutor owed him malice about share profits, but this under the prisoner's own incapacity, as will be further explained, is simply impossible.

The jury unanimously return a verdict of guilty against the prisoner on all the counts charged. 1857.

Meer Fuzul Imam of Kubeapore, zillah Behar.

Teygalli Khan of Jumoothuwa, do. do.

Toolsee Singh of Sookree, do. do.

Mukhun Lall of Patna, do. do.

The circumstances

of the case are too

truly conclusive to ad-

mit of any doubt. The evidence for the prosecution, as to the deceased's having been last seen in the prisoner's company as far as the *tar* trees, is supported by prisoner's own admission, as in like manner, is that of the recovery of the deceased's bracelets, and the bloody knife by his original statement regarding them before the police, rather strengthened by his lame alteration of it before the deputy magistrate, which was directly denied by the deceased's father Boolakee (witness No. 20,) certain discrepancies therefore in the evidences of witness No. 1, 10, and 14 become immaterial, and as regards the last, more especially when the prisoner's delivering up first the bracelets, and then after some delay and a second visit to the spot, the bloody knife, was satisfactorily established by the concurring testimony of the attending witnesses Nos. 6, 7, 8 and 19 whilst under cross-examination before this court. Circumstances, time and place considered all support the truthfulness of such testimony, whilst, that of the prisoner's own relatives, who, could have had no object in accusing him falsely may be implicitly relied on. Prisoner's own statements also as to his possession of the murdered lad's bracelets, and the bloody knife, palpably untrue, and contradictory, are at the same time in either case self-inculpatory, and it is impossible to account for his possession, and concealment of the bloody knife, except as having been the murderer.

The grandfather and father depose that this knife belonged

Ahiachund, prosecutor.

Wt. No. 20, Boolakee.

to the prisoner. The

hands of the murdered

lad mutilated in order

the more quickly to secure the unpliant bracelets, of itself proclaims the object of the murder. The prisoner of late too appears to have had an hankering after money. As will be further explained owing to his incapable state, he has never been entrusted with money. It appears he had of late taken to gambling, and for which purpose, as he possessed none, he must

Ahiachund, prosecutor.

Wt. No. 21, Chooa, prisoner's father.

have purloined his father's money. His father

had lately sold

some oxen and had stored up 3 Rs. of the purchase-money in the house, which missing and on asking the prisoner about, he acknowledged having taken one rupee for a pair of shoes, but denied knowledge of the balance. When apprehended, two rupees were found in his waist, which his father accordingly concludes was the missing amount. In like manner, the prisoner as in-

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MHOWREE.

Wt. No. 1, Bhuttun Khan, chowkeedar.

" " 19, Mudsoodun, jemadar.

Prisoner's statements before Police and sessions court.

two rupees taken out of his waist from Goordial or Moosheyree Teylee father and son in course of business ; whereas, all his relatives as well as Goordial himself, deny any thing of the kind, or

Wt. No. 23, Goordial Teylee.

the prisoner's capacity for transacting business. He knew nothing of accounts, and was only occasionally employed in driving the pack-oxen. His thrice improved statement before this court, was, that Boolwa had snatched away the price of the bracelets Rs. 9, and then when asked how in that case the two Rs. had escaped, he cunningly replied the 9 Rs. were tied up in front and the 2 Rupees at the back of his waist band. Every circumstance thus tells conclusively against the prisoner, and unable to entertain the slightest doubt of his guilt, I convict him on the strongest presumption of the wilful and atrocious murder of his unfortunate little relative the deceased, for the sake of his ornaments.

It is necessary, however, to observe, that the prisoner stuttered to that degree before this court, that I at first entertained very painful doubts whether we thoroughly understood what he meant to say, but as the trial progressed and he cross-questioned the witnesses, it became apparent that we had sufficiently caught his meaning for all essential purposes. He thoroughly understood every thing that was said to him, and his defence being leisurely read over, he acknowledged its correctness. The same thing seems to have taken place in the deputy magistrate's court vide deputy magistrate's No. 131 of 3rd instant to this court. His relatives and witnesses depose that he has had an impediment in his speech from birth, but that it has only become of the excessive character shewn by him in the courts since the murder. They regarded him as deficient in intellect, though certainly not idiotic. The family placed every reliance on him, since they felt easy about the missing lad when they first heard that he had been last seen in the prisoner's company. He has, however, never been married. For fuller satisfaction Dr. Allan at my request examined and watched him for several days. He found no visible cause, though there is slight malformation and the same distressing stuttering. He was at the same time, "perfectly well and healthy and his mind more than usually intelligent for that class of native."

But independent of such results, the record itself witnesses for the prisoner's soundness of mind and moral responsibility. As already explained, the motives in pursuit of his gambling

propensity, although 2 Rs. purloined from his father was then in his pocket, which actuated the prisoner to the commission of the murder, the manner of its commission, the opportunity of the ornaments being worn on the occasion of the marriage being at once seized, together with the prisoner's subsequent conduct, sufficiently indicate that the crime could never have been that of an idiot or a person of unsound mind at the time, irresponsible for his actions. There has been deliberate and continuous design in the prisoner's conduct throughout, whether detaching from the marriage procession and in inveigling his unfortunate victim to such a distant and lonely spot as the Peer Puharree, so well selected for such a crime, it would have been easy for a relative like the prisoner to entice the poor lad to such a place. It would have been difficult for a stranger to have done so. Then the concealment of the bracelets and knife in separate places in the Pachooa reservoir, the delivering up the former on the first, and the latter on the second visit, the non-discovery of any thing particular in the prisoner's dress, to connect him with such a bloody deed, although suspected of having washed his clothes, his unconcerned appearance in the town and before the family of his unfortunate victim immediately after the murder, his accompanying them in the search and his wretched attempt to inculcate an innocent person, all involve the studied design of a most determined criminal. The same design also may be traced in his defences. He has always adhered in some respect to the first, though on each occasion endeavouring to improve on the last, as if discovering its weakness. The defences may be regarded as silly, yet sillier are every day set up by the greatest criminals.

In short, all the prisoner's actions evince an intelligence which place his personal responsibility beyond doubt, and it is therefore impossible for me to urge any thing in extenuation of his guilt, or in arrest of the capital punishment provided for such a peculiarly savage, and premeditated murder.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The sessions judge having submitted the explanation called for by the Court's Resolution,\* the Court

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\* *Resolution of the Court of Nizamut Adawlut.*—(Present: Messrs. B. J. Colvin and J. H. Patton), No. 913, dated the 27th October, 1856.

The Court feel themselves obliged to return the proceedings in this case to the sessions judge. They find that they have not been recorded according to the instructions contained in Circular Order No. 54, of date 16th July, 1830. That Circular Order directs that the proceedings of each date should be recorded consecutively; but as copied, the proceedings of 2nd, 3rd and 8th July are all intermixed. Evidence for the defence has also been taken before the defence itself, which is contrary to para. 8 of that circular; for it appears that witnesses Nos. 25, 26 and 27 of the record, cor-

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have to remark that the course laid down in the C. O. No. 54, of 16th July, 1830, should be always adhered to. The Court having perused, and considered the record, think the prisoner

responding to witnesses Nos. 16, 17 and 18 of the calendar were first examined on the 2nd July, and again on the 3rd idem, while the prisoner's defence was begun and ended on the latter date. Moreover, evidence for the prosecution was recorded on the 8th in continuation of previous evidence, and new evidence was recorded on that date and on the 11th, without the prisoner being called upon to state whether he had any thing to urge in reply thereto. He was allowed, it is true, to put questions to the witnesses; but he should have been formally asked if he had any further answer to offer, or any other witnesses to summon to meet the evidence of the new witnesses summoned by the sessions judge, and his replies to such effect should have been duly recorded. The proceedings are therefore returned to that officer that he may take a fresh defence from the prisoner. If the prisoner offer any further defence and cite witnesses to it, the sessions judge will of course call for a new opinion from the jury, and resubmit the case for the orders of the Court with as little delay as possible.

*In reply to the above resolution the following letter No. 222 A dated 19th November, 1856 was submitted by the sessions judge.*

I have the honor to acknowledge the Court's resolution No. 913 dated 29th October last, returning the trial noted in the margin\* for certain

\* Ahiachund and Government, prosecutors,  
versus

No. 3, Kullur Mhowree—prisoner charged with wilful murder of Beharree Mhowree, boy aged about 8 years for the sake of his ornaments.

Memo.

Copies of the proceedings in continuation only are herewith submitted, the preceding ones having been retained by the Court and the papers of the magistrate's court alone returned which are herewith again resubmitted as a precautionary measure.

† My No. 86 of 9th May, 1853 to sudder court.  
Sudder court's reply No. 520 of 17th May, 1853.

apparent irregularities, and in reply to explain

The proceedings in this and many other trials have not been precisely recorded in conformity with Circular order No. 54 of 16th July, 1830, consequent on the correspondence noted in the margin,† which gave rise to a different practice.

The prisoner's witnesses' evidences were commenced on 2nd July last, but were not closed until the following day the 3rd idem, after the prisoner's defence had been taken. This arose out of the singular difficulties of the trial, originating in the prisoner's painful impediment of speech; whilst his hearing and intelligence were perfect. His witnesses' evidences were first written down with a view to facilitate the perfect understanding of his defence. His examination, of his witnesses on the 3rd resulted as already stated in my report of the trial. "The prisoner cited three witnesses, judging from his cross-examination of them apparently with the object of proving his accusation against Boolwa, but they utterly denied all knowledge of anything in the prisoner's favor," and as the further detention of such witnesses would have been unnecessarily vexatious, they were discharged on the close of the defence the same day, the 3rd idem.

The continuation of the trial on the 11th following without the prisoner's having been formally asked if he had any further answer to offer, must have been an omission of record only. I am sure the question was put to the prisoner, since it is my invariable custom to do so, as every trial that has been before me will shew. I can only conclude, that con-

Kullur Mhowree guilty of the above charges, and seeing nothing to extenuate his guilt, sentence him to be hanged.

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sequent on the delay and difficulty in obtaining the prisoner's replies, and satisfying ourselves, that we thoroughly understood his meaning, which gave rise to constant repetition, that the record of the formal question and answer was omitted through oversight. I shall, however, protect myself from the possibility of like omission in future by certifying to the same in my own hand-writing.

On the 10th instant the prisoner's fresh defence, as directed by the Court, was taken. He set up no new defence beyond naming two witnesses Jehul Koormee and Choocha Dosadh of Pitownjia to the *alibi* of his having been absent at that place, 10 miles distant in search of Bhoosa. His original defence of the 3rd July last being again read over to him he fully acknowledged it. The witnesses thus named by him, were summoned. The deputy magistrate's proceedings of 17th instant reports that there are no such persons or even of a different caste of the same name residing at Pitownjia. Prisoner himself could not give their father's names, and he closed his defence to-day with no other plea than that of witnesses.\*

Although such results scarcely constitute a further defence, still as witnesses had been subsequently named and summoned, and with a view to avoid any chance of informality the trial was again heard before me

Sheikh Mugdoombux of Imailpore Tandeh, zillah Patna.

Mullick Usud Alli of Mouzufferpore Dhumowl, Do. Behar.

Kasheelal Chowdree of Barh, Ditto Patna.

Heytnarain Singh of Burwan, Ditto Behar.

to-day with  
the assist-  
ance of the  
jury who  
unani-

mously re-

turned a verdict of guilty against the prisoner on all the counts charged.

The *alibi* to the prisoner's having been at Petownjia in search of Bhoosa, is thus utterly unsupported and false. It is at the same time directly contradicted by the plea originally set up by himself, and continued before the deputy magistrate, to another *alibi*, viz. to his having been absent at Mooseyhrce Teylee's in the town of Behar, in search of *khullee*.

As the two places are ten miles apart, the contradiction is irreconcilable. In concurrence with the present verdict therefore, I have nothing further to add in continuation of my original report on the trial than to repeat its finding.

\* Sic in orig.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*

Assam. ONI RUDRU (No. 1,) JAM (No. 2,) GOUR (No. 3,) HAZARROO (No. 4,) AND ROZANATH (No. 5.)

1857. CRIME CHARGED.—Nos. 1, 2, 3 and 4, of the wilful murder of Jogopothee Sirmah on the 2nd September, 1856; No. 5, accessory before the fact.

February 12. Case of ONI RUDRU and others. Committing Officer.—Captain W. Agnew, magistrate of Gowalpara.

Prisoners sentenced to imprisonment in transportation for life; there being no satisfactory evidence as to who actually committed the murder. Attention called to Laws, and Circular Order on conditional pardons. Tried before Major H. Vetch, deputy commissioner of Assam, on the 31st October, 1856.

*Remarks by the deputy commissioner.*—This case was first brought to the notice of the police on the 4th September, by the prisoner No. 5, Rozanath half-brother to the deceased who reported that he (deponent) had left his village on the 2nd September, to go to Gowalpara, but failing to procure a boat at the place he expected, he put up for the night at Satpara, with one Sungutram, and next day returned home, where he learnt that the deceased after performing *poojah* had retired to rest, and that one Neethi, who went to call him that morning, could get no reply. On which, informant with others went to the house, but getting no answer to their calls, entered it and found the deceased lying dead on his couch, with the mark of a blow near the left eye, and a scratch on the back, from which he suspected the deceased had been murdered.

The darogah on going to the spot found the corpse in such a state of decomposition as to preclude his tracing the marks of injuries, but from the deposition of several witnesses who had seen it when discovered, it appeared that there were marks of violence on the face, that the neck was red and swollen and scratches on the back, further that the head, back and feet of the corpse were soiled with mud; that a lamp, a brass "*batta*" and string of beads were found lying at the place of *poojah*, affording grounds for believing that deceased had been murdered, but the darogah at the same time reported that he had obtained no proof of who were the perpetrators.

The magistrate not being satisfied with police investigation, deputed the *serishtadar* of his court to make further enquiry on the spot, there; on the 13th September, he apprehended Neethi, who had given his evidence concerning the *poojah*, and who accused the prisoners Nos. 1, 2, 3, 4, and Pannoo, of being the perpetrators of the murder, saying they had acquainted him

of their intention of committing it, when going, and of their having effected it when returning; these all confessed before the *serishtadar* of their having been present, but denied having had any actual hand in the deed, yet each accusing others of the gang, of being principals, except the prisoner No. 5, Roza-nath; he was, however, sent in to the magistrate, as appearances were against him.

When brought before the magistrate, the prisoners Nos. 1, 2, 3 and 4 made nearly similar confessions, but with a view to obtaining further evidence against them in case of their retracting their confessions, he pardoned Pannoo and Neethi, and admitted them as witnesses for the prosecution.

*Oni Rudru prisoner.*—Before the magistrate and jury, when the prisoner Oni Rudru No. 1, was called on to plead to the first charge, instead of the simple plea of “guilty” or “not guilty,” he entered into a statement of what he alleges transpired, pleading that he was constrained by the others to be present, but only a looker-on.

The prisoners No. 2, Jam, No. 3, Gour, No. 4, Hazarroo, all pleaded *not guilty* to the charge of wilful murder, and the prisoner No. 5, Rozanath *not guilty* to the second count of accessory before the fact.

*Confession of Oni Rudru prisoner.*—In the confession of Oni Rudru No. 1, before the *serishtadar*, to having been a looker-on, he accused Jam No. 2, Gour No. 3, Hazarroo No. 4, and Pannoo of being the actual perpetrators. Before the magistrate, while he made a similar confession, accuses Jam No. 2, and Gour No. 3, as the persons who killed the deceased by strangulation, adding, that Nos. 2, 3, and 4, were indebted to the deceased, who had pressed them for payment.

*Of Jam prisoner.*—In the confession of Jam No. 2, before the *serishtadar* to having been a looker-on, he names Oni Rudru and Hazarroo No. 4, of having strangled the deceased, by holding him down by a bamboo placed across his neck, and adverts to a quarrel between Oni Rudru and deceased about a well, as a cause of ill-feeling.

Before the magistrate, in making similar confessions, he accuses Oni Rudru No. 1, simply of having killed the deceased by a blow with a *lattee*; again adverts to the quarrel about the well, in which he includes the name of the prisoner Rozanath No. 5, and of threats having passed between them and the deceased, about killing each other.

*Of Gour, prisoner.*—In the confession of Gour No. 3, before the *serishtadar*, to having been a looker-on he named Oni Rudru No. 1, and Hazarroo No. 4 as the perpetrators, by holding the deceased down with a bamboo placed across his throat; and while making similar confession respecting himself before the magistrate, he accuses Oni Rudru alone of being the perpetrator;

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alludes to the quarrel about the well between the deceased and Nos. 1, and 5, and names them as the persons who devised the murder.

*Of Hazarreo, prisoner.*—In the confession of Hazarreo No. 4, before the serishtadar, that he was present but only as a looker-on; names Jam No. 2 and Gour No. 3, as the persons who held down and strangled the deceased.

Before the magistrate he made similar confession respecting his own share in the deed, adverts to the ill-will between Oni Rudru, No. 1, Jam No. 2 and Gour No. 3, as the actual perpetrators of the murder.

*Witnesses for the prosecution.*—Pannoo deposed that on the

Pannoo witness.

day of the murder, the prisoners Oni Rudru, No. 1, Jam No. 2, Gour No. 3, and Hazarreo No. 4, came to his house and asked him to go with them to kill Jogopothee; that he objected, but when Oni Rudru No. 1, threatened, he went with them. Oni Rudru No. 1, said that Jogopothee was at his *poojah* in his garden, there Oni Rudru, No. 1, Jam No. 2, and Gour No. 3, each armed with a thick *lattee* fell upon the deceased and killed him, whilst deponent and Hazarreo No. 4, who were empty-handed, stood within ten cubits; that the night was so dark that he cannot tell in what manner deceased was put to death, he made but one exclamation, "*bap*," and beyond that did not utter a cry or groan; witness heard no sound of blows or kicks, all assisted in removing the deceased into his house; he was then dying, but not dead; he was laid down and a cloth thrown over him; witness then went to his own house. Rozanath No. 5, was not of the gang, but during the day, he had consulted with deponent about murdering the deceased; knows of a quarrel between No. 1, and deceased about a well; cannot say whether that was the cause for his being murdered; that he was previously in good health, and a man of middle age. On being questioned as to what he had stated before the magistrate of having heard the sound of blows, he admits that such was the case.

Neethi deposed that on the day of the murder he had been

Neethi, witness.

asked by the deceased to clear a place in his garden for *poojah*; that he had done so, and that he, in the evening, took the necessary offerings to the deceased, and on his return near Oni Thakoor's homestead, he met all the prisoners (Rozanath No. 5, excepted) and asked where they were going, Oni Rudru No. 1, replied, Jogopothee is at *poojah*, and we are going to kill him, deponent was told to go home, and went; what they did after, he cannot say; next day learnt that Jogopothee was dead; Hazarreo No. 4, only had a stick in his hand, it was a split piece of bamboo, knows of no ill-will to the deceased except a quarrel about a well. On its being recalled to his recollection that he had stated in his

former examination that he had been informed of the murder that night by the prisoners, he admits it and says, that he had gone to sleep when he was aroused by Hazaroo No. 4, who told him that the deceased had been murdered.

Further deposes that Rozanath No. 5, was in the village on the afternoon of the day, but afterwards set out for Gowalpara and stopt the night at Satpara. Witness accounts for his being let into the secret from his being a resident, and that he might otherwise have happened to be in attendance on the deceased at *poojah*.

Three witnesses\* depose to the apprehension of the prisoners Nos. 1, 2, 3 and 4, and their confessions before the serishtadar. The two latter of these also depose to having seen the corpse, and to have observed red

marks on the neck, which was swollen, and marks under the eyes.

Three witnesses† prove the confessions made before the magistrate.

† Jugroo, Kanaram, Jugoram, witnesses.

*Defence.*—Oni Rudru No. 1, in his defence alleged that at the

instance of Neethi he gave the deceased some blows, Neethi having told him that the *poojah* was made for his, prisoner's destruction; that he had refused to kill the deceased, and he was his half-brother, it was after this that, Neethi, Jam No. 2, Gour No. 3, Hazaroo No. 4, and Pannoo went and committed the murder, while he, prisoner, remained at home; that he had been tutored by the serishtadar in what he had said.

Jam No. 2, in his defence alleged that his confession was extorted by the serishtadar and that he did not know what had been written; that he wished to tell the magistrate, but was afraid, and the serishtadar would not let him go; that he only repeated what he had been told to say, he names witnesses to prove the ill-treatment.

Gour No. 3, in his defence alleged that Neethi called him to come and assist in killing Jogopothee, who was at *poojah*, and on refusing Oni Rudru No. 1, forced him; that, while he remained at a distance of ten cubits, the other went forward to where the deceased was sitting; cannot say what was done, presently they took up and carried the deceased to his house, he was then alive, but in a dying condition.

Hazaroo No. 4, alleged in his defence that he was called by Oni Rudru and on the way meeting Jam No. 2, asked him what the Thakoor could want him for, he said he did not know; on arriving, the Thakoor said, Come along, and we will kill Jogopothee; that he refused and remained at Oni Rudru, No. 1's house; Pannoo also stayed with him, whilst Gour No. 3, and Oni Rudru

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No. 1, accompanied by Jam No. 2, entered the garden to kill deceased, but does not know what they did, did not himself do the deed neither did Rozanath No. 5, advise it.

Rozanath No. 5 makes no defence beyond a denial, and alleging that he has been falsely accused.

Of the three witnesses examined on behalf of the prisoner, Jam

Witnesses for defence.

Bhookut, Rajbungsee, Sabahram,

Obhorasee, witnesses.

No. 2, two deposed\* that they know of no ill-treatment, one of these states that when running off, prisoner was caught by a bur-

kundaz, but that no harsh treatment was used to make him confess.

The third witness deposes that the scriishtadar asked No. 2, if he had killed the deceased. He denied, when orders were given for his being bound, and when his hands were being tied, he confessed, on which they were freed.

*Verdict.*—The jury and magistrate were unanimous in convicting the prisoners Nos. 1, 2 and 3, of the murder, No. 4. guilty of being present, aiding and abetting, and No. 5, of being an accessory before the fact.

*Opinion of the deputy commissioner.*—The evidence of Neethi to his having prepared the place to where the deceased was to perform *poojah*, to his meeting with the prisoners Oni Rudru, No. 1, Jam, No. 2, Gour, No. 3, Hazarloo No. 4, and Pannoo going to that spot, with the avowed intent of murdering the deceased, and that of Pannoo an eye-witness to the deed, the sudden death of deceased, the marks of violence seen on the corpse, particularly on the neck, and the confessions of all four prisoners in the mofussil, as well as before the magistrate, each to being an accomplice in the crime, although each denied being the murderer, and their having failed to establish any defence, affords convincing proof that all of them, were more or less concerned in a most foul and preconcerted murder, by assassination, of a defenceless man; further the evidence of Pannoo and recriminations among the prisoners, indicate Oni Rudru No. 1, Jam, 2, Gour No. 3 as the persons who took active part in the deed, I therefore convict them of the wilful murder of Jogopothoe; as I find no proof that Hazarloo No. 4, took a prominent part in the murder, but rather that he did not, and was only a looker-on, I convict him of being an accomplice in the crime.

Against the prisoner Rozanath No. 5, there is the direct evidence of Pannoo to his having consulted with him about putting the deceased to death, the evidence to the quarrel between him and the deceased about a well, his having been seen in the village not many hours before the murder, his sudden disappearance with the alleged intention of going to Gowlparah, his return next day (having taken care to have evidence to prove *alibi*) all combined, afford so violent presumption of his having

had a principal share in preconcerting the murder, that I convict him of being an accessory before the fact.

The magistrate has proposed that Oni Rudru No. 1 alone should be sentenced to suffer death, as he considers that Jam No. 2, and Gour No. 3, have been worked upon and influenced by Nos. 1 and 5 who are brahmins, this they may have been, but we do not know what motives themselves may have had. Oni Rudru alleges they were indebted to the deceased, and that he was an importunate creditor, but of this no proof has been adduced, yet whether they had a motive for their envy, or acted as assassins at the behest of the prisoners Nos. 1 and 5, makes little, if any, difference between their guilt and that of No. 1 except so far as respects his relationship to the deceased. I am therefore of opinion that they are all deserving of capital punishment.

The prisoner Hazarrou No. 4, I recommend for a sentence of imprisonment for life with labor in irons in transportation.

The prisoner Rozanath No. 5, although not present at the murder is, in my opinion, not less guilty of the death of the deceased than the others, and I would recommend that he be sentenced also to imprisonment for life with labor and irons in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners,\* Nos. 1, 2, 3 and 4, confessed before the magistrate's serishtadar, who had been deputed to investigate the case; and these confessions are proved to have been voluntary, except that in the case of prisoner No. 2. One of the three witnesses, called by him, states that this prisoner was seized, when running away, by the burkundaz; and another that when this prisoner denied his guilt, he was bound; and when he confessed, he was unbound. The prisoners, Nos. 1, 2, 3 and 4, confessed also before the magistrate. At the sessions, No. 1 stated that he had been tutored by the serishtadar; but admitted that he had struck the deceased two or three blows. No. 2 urged that his thannah confessions had been extorted; and that he was too afraid of the serishtadar to withhold his confession before the magistrate. No. 3 confessed to being at the spot, and No. 4 admitted being an accessory before the fact. The confession of each is to the effect, that *he* did not actually commit the murder, but that one or more of the others, or witness Pannoo did. Pannoo and Neethi, as the least guilty, were pardoned, and admitted as witnesses. Their evidence corroborates the confessions of prisoners Nos. 1, 2, 3 and 4, as to the place, manner, and other circumstances of the murder, the enmity of prisoners, Nos. 1 and 5, with deceased, and the guilt of the prisoners Nos. 2, 3 and 4. There is also clear independent

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\* N. B. Prisoners Nos. 1 and 5 were reported by the Deputy Commissioner on the 2nd and 13th of January, to have died after the trial.

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evidence of the villagers, to the marks as of bruises and of strangulation, about the neck and eyes, and as to the body being soiled with mud, which it would have been from being dragged into the house. The prisoners, No. 1 (since dead), Nos. 2 and 3, appear to have been most actively engaged in the murder; but it is not sufficiently clear by whose hands the deceased met his death; for the only witness present, Pannoo, says that he was at too great distance, and the night was too dark to admit of his seeing, at ten cubits even, whose hands gave the blow, or what individuals effected the murder, or how it was done. The prisoners, Nos. 2 and 3 state that No. 1 struck the deceased a blow on the back of the neck, which almost killed him, and that they were *with him*, prisoner No. 1; but the absence of all clear direct evidence, irrespective of the contradictory recriminations amongst the prisoners on that precise point, deprives us of sufficiently trustworthy evidence to this particular fact.

Under all these circumstances, we consider, with reference to the precedent of Deendyal Tewaree (Nizamut Adawlut Reports 1851, page 262) that the prisoners can only be sentenced to imprisonment in transportation for life. We sentence them accordingly.

The Court observe that there is no record of the tender of pardon being made and accepted conditionally in the manner required by Regulation X. of 1824 and Circular Orders dated 18th November, 1853, No. 113, and 22nd January, 1854.

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PRESENT :

G. LOCH AND H. V. BAYLEY, ESQS. *Officiating Judges.*  
GOVERNMENT

*versus*

MUSST. NAJOOK BIBEE.

Sylhet.

CRIME CHARGED.—Wilful murder of Sheikh Kutye.

1857.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

February 13.

Tried before. Mr. M. Shawe, officiating judge of Sylhet, on the 17th November, 1856.

Case of  
MUSST. NA-  
JOOK BIBEE.

*Remarks by the officiating sessions judge.*—On the 29th of September last, Jeebun Chung chowkeedar gave information to the darogah of thannah Moolagool that Sheikh Kutye, (the deceased,) was intimate with Musst. Najook Bibee, the prisoner, and was in the habit of visiting her frequently; Musst. Shonye Bibee, the mother of the deceased, had also informed him (the chowkeedar) that the corpse of her son Sheikh Kutye had been found in the prisoner's house, with whom he was intimate. The chowkeedar further stated that on the night of the occurrence he, on going his rounds, went to the house of Najook Bibee and saw Sheikh Kutye sitting and joking with her. The darogah went to the spot, and held the usual *sooruthal* and discovered two severe wounds on the person of the deceased, one on the left side of the throat, two inches in length, one in breadth and one and a half in depth, and another on the cheek, from the top of the ear to the chin, about five inches long, one inch broad, and one inch deep, and saw the prisoner's bed in a bloody state: the prisoner on being apprehended, stated that the deceased being desirous of being intimate with her, used occasionally to visit her, but she did not yield to his desires; that, on the night of the occurrence, the deceased visited her during the early part of the night, and returned at midnight, when she was asleep, and having entered her house slept in her bed, and on his taking her in his arms, she awoke and took up a *dao*, which she kept by her, and struck the deceased twice with it, which caused his immediate death; she further stated, that at the time when inflicting the blows she did not recognize the person, but on getting a light she discovered it was the deceased, she also stated, that when she struck the deceased, he was asleep. The prisoner made the same statement before the magistrate, and added, the deceased having per force had connection with her, was lying on the bed, when she got up and struck him. Before this court she confessed to having killed the deceased without knowing who the individual was. The prisoner's confessions before the police and the magistrate have been attested by the subscribing witnesses thereto,

Prisoner im-  
prisoned for  
life; the exact  
circumstances  
under which  
the prisoner  
killed deces-  
ed, not being  
clearly in evi-  
dence. Re-  
marks on  
varying state-  
ments in con-  
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and have been made voluntarily, the prisoner confessed the crime, but pleads that she killed the deceased for attempting to have forcible connection with her; but her plea is of no avail; she did not mention before the police, that the deceased had forcible connection with her; whereas before the magistrate she stated, that he had: it appears from the evidence of the witnesses and circumstances of the case, that the deceased was intimate with the prisoner,—had the deceased not been intimate with the prisoner, she would not have remained silent when he entered her house and would not have permitted him to sleep in her bed with her.

There is no apparent cause for the prisoner killing the deceased, save jealousy, as he was also intimate with another woman Manick Bibee (witness No. 18); the attack on the deceased was most deliberate, cold-blooded, and treacherous; he being asleep at the time, the instrument used to inflict the wounds which caused death was a *dao*, a very heavy and dangerous weapon.

Under all the circumstances of the case, in concurrence with the verdict of the assessors, I convict the prisoner of wilful murder, and, as there are no mitigating circumstances and the charge is fully proved, I would recommend that the prisoner be sentenced *capitally*.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The facts clearly in evidence are that, on the 28th September, prisoner's husband was at Sylhet; and that she and her child were alone at home; that prisoner and deceased were together in prisoner's verandah at 9 P. M. on that date; that deceased's mother, at midnight, heard her son leave his house, adjoining her's and prisoner's; and on asking why, was told by him, that it was for a necessary purpose; that he was not seen again alive; that early on the morning of the 29th September, the mother of the deceased called the village chowkeedar to view the body of the deceased, as lying in prisoner's house, with a large wound on the throat on the left side, and another on the right cheek; that the chowkeedar and villagers saw the body there in that state; and that the prisoner made confessions voluntarily to the police, the magistrate, and the sessions, to the effect that her hand caused those wounds, with a *dao*.

The nature of the crime and the proper measure of punishment, however, in this case depend so much on what statements in those confessions are to be relied on, that it is necessary to enter into them in some detail.

The prisoner stated to the *police* that deceased wished her to yield to his desires, and that she refused; that she had gone to sleep on the night of the occurrence, when the deceased entered the house, and she was awoke by his taking her in his

arms, and drawing her towards him; that without knowing who it was, she seized a *dao* which was at her pillow, and struck the person a couple of blows; that she then got a light, and discovered that she had killed her brother-in-law, Kutai, while attempting to force her. She, however, subsequently states, in reply to a question put to her, that she killed Kutai when he *was asleep*.

She stated to the *magistrate* that Kutai came in, and *forced her*; and after having satisfied his desires, laid himself down with his head on the pillow; that she then struck him with a *dao*, and getting a light saw that it was her brother-in-law. She does not, in this confession, distinctly state, whether she knew the deceased when she struck the blows.

She stated to the *sessions judge* that some one tried to force her, she did not know who then; and that she cut him with the *dao*.

She no where states, nor does it any way appear that she made any cries, or call for assistance, when assaulted, or when she had inflicted the wounds, or when she had discovered whom she had wounded; but that she took up her child, and remained in a betel garden till apprehended next day.

The magistrate and sessions judge have assumed, that the probable cause of the murder was jealousy; and that the deceased, having seduced the prisoner, was also carrying on an intrigue with Manick Bibee; but of this there is no proof. In her confession to the police, the prisoner denies having had connexion with the deceased; but adds that she had heard he intrigued with Manick Bibee; and had been beaten by her brother, Masoom; but beyond this, there is no statement in the evidence of any intrigue with Manick Bibee. The witnesses indeed, appear generally to have supposed that some quarrel had taken place between the prisoner and the deceased; and that she had killed him in a fit of anger. The fact of deceased's having a criminal connexion with prisoner is not satisfactorily proved, though it seems to have been a general impression. The chowkeedar, Jebun, says, it was well known. Moheem-oodeen says, he thought it was the case from the terms they seemed to be on; but all the other witnesses say, they heard of it from the mother of deceased. She alone states positively the fact of its being so. Under these circumstances prisoner's jealousy of Manick Bibee cannot be said to be proved as a motive for the wilful murder.

The facts proved, irrespective of prisoner's confessions, afford *primâ facie* a violent presumption, that prisoner was guilty of wilful murder. It has, however, to be considered how far prisoner's confessions, which alone afford direct evidence of the motive, rebut this presumption; or, in other words, whether the plea in justification that she killed the deceased, because he

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attempted to force her, is to be admitted at all, or to what extent.

When the confessions of the same prisoner vary, as they do in this case, we think the proper course will be to look at all of them taken together, but not as necessitating equal credit to be given to all; i. e., not as requiring us to adopt those portions which may fairly be considered to be opposed to independent circumstantial evidence of a trustworthy character.

In this case then, on the one hand, the forcing is not distinctly stated by the prisoner in her police confession. But such confessions are the least to be trusted, as well from the careless, as the wilfully incorrect manner, in which they may be recorded; and the witnesses to prisoner's confession before the police distinctly state that prisoner had all along mentioned there her unwillingness to have connexion with the deceased; and his repeated solicitations. On the other hand, the contradictory character of prisoner's statements to the Police, the Magistrate, and the Judge, as to the deceased being asleep or not, and as to the person having succeeded in forcing her or not, must, to a certain extent, throw doubt upon the truth of those portions of the confessions most favourable to prisoner. Further, the plea of being virtuous, and having been forced, is opposed to the deceased's mother's statement, and the general impression that that prisoner and deceased intrigued, and to the *proven* facts that she allowed prisoner to be with her at nine p. m. in her house, in her husband's absence, and that she made no cry for assistance, or any mention to her neighbours, (although houses adjoined,) at the time of the alleged forcing, or after. Moreover, her statement, as to ignorance of whom she had struck, is opposed to the fact that she states deceased was continually soliciting her, and was being continually refused, and no one else is mentioned as being in the same position.

Still there is nothing in the evidence sufficiently to prove malignity, or even enmity; but the reverse; even up to within three hours of the occurrence.

While then, we cannot admit that there is sufficient clear proof of the prisoner's plea of her having killed deceased while, or for forcing her, we cannot find any such deliberate or malicious intent, as to call for the extreme penalty of the law.

We therefore sentence her to be imprisoned for life in the zillah jail, with labor suited to her sex.

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PRESENT :

G LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND ELLAHEEBUX KHAN

*versus*

RAMISSUR PANDY (No. 13,) PURYAGLAL (No. 15,) AGUN BIND (No. 16,) SHU BIND (No. 17,) SHURAJ BIND (No. 19,) JAISRI BIND (No. 20,) AND LALOO BIND (No. 22.)

Shahabad.

1857.

CRIME CHARGED.—Plundering nine rafts of firewood, while being floated down the Kohera Nuddee for the use of the Railway Company unaccompanied with aggravating circumstances.

February 13.

Committing Officer.—Mr. W. C. Costley, deputy magistrate of Saseeram.

Case of  
RAMISSUR  
PANDY  
and others.

Tried before Mr. A. Littledale, officiating sessions judge of Shahabad, on the 23rd November, 1856.

*Remarks by the officiating sessions judge.*—The circumstances connected with this case are as follows.

Prisoners  
convicted of  
plundering  
timber-rafts.  
Severe punish-  
ment inflicted  
in order to  
public protec-  
tion.

Mr. Bingham, an Indigo planter, living in Pergunnah Chainpore, within the Saseeram sub-division, had undertaken to supply the railway contractors, Messrs. Burn and Co. in this district, with a certain quantity of wood for burning bricks required for a bridge to be built over the Kurrum Nassa river; for four or five months he had been having wood cut in the jungle of which he held a six years' lease, and on the evening of the 10th of August, ten rafts of wood to the extent of nearly twelve thousand maunds were started from Doorgah down the Kohera river, on their way to Chonsa, on the Ganges, there were only two persons actually on board the rafts, viz. the witnesses, Purshun Mullah and Keesor Mullah, but the prosecutor, Ellaheebux Khan, the gomashita of Mr. Bingham with Shewburt Nonia, Petumber Nonia, Jugassur Nonia, Moolchand Nonia, witnesses and others followed the rafts on both sides of the river. On the rafts arriving at the boundaries of the villages of Bhowalpore, Pursotimpore, Goonay, Biddhor and Seecunderpore, about seven o'clock on the following morning, nearly a hundred of the inhabitants came down to the river, seized hold of nine of the rafts, cut the fastenings and, notwithstanding they were told that the wood belonged to the Company, plundered the whole of it to the value of more than seventeen hundred rupees; information of this was immediately given to Mr. Bingham, who sent notice of what had occurred in a letter, dated 12th August, to the deputy magistrate of Saseeram, who directed the matter to be enquired into by his police. On the 22nd of that month, the darogah reported the discovery of thirteen large pieces of

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wood in the premises of the prisoner No. 13, inhabitant of Pursotimpore, who appears to live with two others (not apprehended); eight pieces were found on the Chubootra and five pieces in a stable, weighing altogether seven maunds and a half. Seventy-seven other pieces weighing more than thirty-one maunds were found in the premises of other inhabitants of Pursotimpore and two hundred and ninety-two other pieces weighing over a hundred maunds were discovered in different parts of the same village and the adjoining one of Seecunderpore. On the 24th another report was sent in by the darogah, mentioning the discovery of other portions of the plunder in the houses and fields of the following prisoners.

In the fields of prisoner No. 15, inhabitant of Biddhee mouzah, one piece of *gole* and seven of *boongra* (the former is a very long piece and the latter are large thick bits of wood) weighing five maunds.

In the field of prisoner No. 16, inhabitant of Goonay mouzah, thirteen pieces of *koonda* (very large pieces) weighing twenty-four maunds. In the house of prisoner No. 17, inhabitant of Goonay, under some bran eight pieces of *gole* wood, and on the "*suhun*" five pieces of *boongra*, weighing four maunds. In the house of prisoner No. 19, inhabitant of Goonay, fourteen pieces of *boongra* wood, weighing three maunds. On the "*suhun*" of the house of prisoner No. 20, inhabitant of Goonay, twenty-one pieces of *boongra* wood, weighing three maunds. In the house of prisoner No. 22, inhabitant of Goonay, five pieces of *boongra* wood weighing one maund and a half. Thirteen prisoners were then sent in to the deputy magistrate.

One of the mullahs on the rafts, Kenoo Mullah, a witness to the fact, after giving his evidence in the deputy magistrate's court and being bound down to appear at the sessions has not appeared and cannot be found, there still remain besides the prosecutor Ellaheebux Khan, five eye-witnesses to the attack on and plunder of the rafts, viz. Purshun Mullah, Shuburt Nonia, Petambur Nonia, Jagasur Nonia, Moolchand Nonia.

This last person has been sent in to give his evidence merely to the identity of the property; but he was a witness to the plunder; all these persons distinctly support the account given by the prosecutor as to the inhabitants of the above-mentioned villages coming down in large numbers, plunging into the river, dragging the rafts to the bank, cutting the fastenings, and carrying off the wood in spite of the remonstrances made by the prosecutor and his people. The evidence shows that the rafts were most firmly bound, and it is not in the slightest degree shown in any way that they had broken up and became jammed at the scene of the plunder, as conjectured by the deputy magistrate in his remarks on the back of the calendar; none of the prisoners were known to the prosecutor or the witnesses before,

but they have all been recognised as being concerned in the plunder and attack. The wood which has been found has been sworn to as that which was carried off from the rafts. The defence, of the several prisoners, is as follows.

Prisoner No. 13 says, he was at a village two and half *cos*s away and did not return before the evening of the day on which the occurrence took place. On hearing of the villagers having taken out a quantity of the wood that had floated down the river and that a letter had been sent by Mr. Bingham to the *maliks* of Pursotimpore, he, on the following morning, went to Mr. Bingham, told him of a quantity of wood which had come down with the flood having been taken by the people of his village, and that as he had since heard it belonged to him, he might take it. As to the wood found in his premises, it was what had been collected from that which was brought down by the inundation.

Prisoner No. 14, was half a *cos*s off at the time of the occurrence. On returning saw that the people had been getting wood out of the river.

Prisoner No. 15, was on that day two *cos*s off, the prosecutor put the wood in his field.

Prisoner No. 16, was half a *cos*s off on that day.

Prisoner No. 17, was told by prisoner No. 15, to go and get out some wood which was coming down the river, they both did so and many others did the same.

Prisoner No. 19, denies all knowledge of the plunder or taking any of the wood.

Prisoner No. 20, denies plundering or taking any of the wood, was called by prisoner No. 15, to the river, when he saw that he had got out some small pieces of wood and was told by him to take them away, which he did.

Prisoner No. 21, was called by the prisoner No. 15, and told to get out the wood which had come down with the inundation, went with him and saw some small pieces near the bank of the river, by his directions got them up and placed them on the bank.

Prisoners Nos. 22 and 23, know nothing of the affair.

Prisoner No. 24, was in his field at a distance of one *cottah* off.

Prisoner No. 25, towards the latter end of the day, saw a piece of wood floating down the river and took it out; on a Bengalee Baboo's coming up and questioning him as to his having taken any wood, showed him the piece, which the Baboo said belonged to him and told him (the prisoner to take care of it.)

Of the seven witnesses named by the prisoner No. 13, he declined having the evidence of four taken, one was absent and the other two have been examined.

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Of the three witnesses for prisoner No. 15, one was absent, and the other two he declined having examined. Two witnesses support the defence of prisoner No. 16.

Those for prisoner No. 25, are declined by him, the remaining prisoners have none.

The law officer acquits the whole of the prisoners. In this finding I cannot concur with regard to all of them. There is no proof that the rafts had been broken up by the force of the stream on their way down, and the supposition of the law officer that the prisoners carried off the property as being merely "drift" wood belonging to no one is contradicted by the evidence, which there is no reason for doubting; it is proved that the rafts were forcibly seized, their fastenings cut, and the wood plundered in spite of all the remonstrances made by those in charge of them. Mr. Bingham has suffered a heavy loss in money and also injury in having thus been prevented from acting up to his engagement with the railway contractors. I convict the prisoners, Rameshar Panday, Puryaglall, Agum Bind, Shew Bind, Shewraj Bind, Jaisri Bind, Laloo Bind, in whose possession part of the property was found, of being concerned in the plunder of the rafts and would sentence them to imprisonment for one year, to pay a fine of fifty rupees each in one month, in default of which to labor, until such be paid. Rameshar and Puryaglall, who are the principal persons in Pursotimpore and Bidahor, to pay each a fine of 200 rupees and the rest 100 rupees each, under Act XVI. of 1850, to be realized from their property and paid to the owner of the rafts. The amount of what has been plundered or lost is estimated at 17 or 1800 rupees and many more persons than these whom I have convicted, were concerned in the matter; it appears to me therefore that these seven prisoners cannot fairly be made responsible for the whole amount.

Dhuram Ahir, Jorawar, Koleshur Ageet, and Peroo, I have acquitted, no property having been found in their possession and the mere recognition of them not being, in my opinion, sufficient for conviction. Goordial Ahir died before the completion of the trial.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners have been identified as the parties who broke up the rafts; and wood, belonging to the prosecutor's employer, was found in their fields, and was fully identified. The principals, Ramessur Panday and Puryaghlall, plead *alibis*; but have been unable to substantiate their defences. From a perusal of the record, it is evident that the prisoners with other villagers forcibly cut, and broke up, and plundered the rafts; and we can find no sufficient grounds for the conclusion arrived at by the deputy magistrate that the "rafts, from being badly fastened, on coming within the influence of the cur-

rent separated, quickly becoming a mass of drift wood which jammed at the spot mentioned, owing to the narrowness of the river." Rafts coming down a river are not attended by guards generally, but are under charge of one or two people only. It is therefore especially necessary that any interference with this feeling of security sanctioned by custom, should be severely punished. We therefore think it advisable to make an example in the present case, and we accordingly sentence the prisoners Ramessur Panday and Puryaghlall, who appear to have been influential parties in the village and the leaders, to three years' imprisonment from 28th November, 1856, and to pay a fine of Rs. 100 each within fifteen days from the intimation to them of this order, or in default, to labor till such fine be paid; and to a further fine of 600 jointly and severally under Act XVI. of 1850, and if not paid, to be realized by distraint and sale of their property; and the other prisoners to imprisonment for one year each, from 26th November, 1856, and to pay a fine of rupees 25 in fifteen days from the date of receiving intimation of this order, or in default, to labor till such fine be paid; and to a further fine of rupees 200 jointly and severally under Act XVI. of 1850, to be realized as above.

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Case of  
RAMISSUR  
PANDY  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

NAGOO DAS (No. 8,) GOBURDHUN DAS (No. 9)  
AND RAMKOYAL (No. 10.)

Midnapore.

CRIME CHARGED.—1st count, Nos. 8, 9 and 10, dacoity on 26th May, 1841 in the house of Ramhurry Chuckerbutty (deceased) master of Gopaul Chunder Bose (plaintiff) inhabitant of Aooree, thannah Nemal; 2d count, Nos. 8, 9 and 10, dacoity on 10th June, 1847, in the house of Sunker Hajrah, master of Sheebram Berrah (plaintiff) inhabitant of Gopeenathpore, thannah Nemal; 3d count, Nos. 8 and 9, dacoity on the 29th March, 1843, in the house of Soondur Sahoo son of Rampershad Sahoo, inhabitant of Ticeasy, thannah Kanchunnagore, and No. 10, dacoity on 23d June, 1852 in the house of Kally Doss Nag darogah of Ghat Russoolpore, thannah Nemal; 4th count, Nos. 8, 9 and 10, being by profession dacoits, and having belonged to gangs of dacoits under Sirdars Dhunnoo Bhooya and others (convicts.)

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Appeal re-  
jected. Pri-  
soners con-  
victed, and  
sentenced under Act XXIV.  
of 1843. The  
evidence of  
the approver

Committing Officer.—Capt. C. H. Keighly, assistant general

1857. superintendent, assistant dacoity commissioner, and joint-magistrate of Midnapore.

February 14. Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore on the 11th November, 1856.

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and others.

*Remarks by the officiating sessions judge.*—The prisoners plead *not guilty*.

witnesses being corroborated by other independent evidence; and the pleas of enmity of the witnesses against prisoners, not being proved.

The two first urge in their defence that Dhunnoo Booya, and of a consequence his brother, bear them a grudge. Their identity is sworn to by three approver witnesses, who denounce them further, as having been their accomplices in the several dacoities, with which they are charged.

In support and corroboration of the testimony of these approvers, the records noted in the margin\* have been laid before the court. The record of the

\* *Nuthee* No. 175, dacoity in the house of Ramhurry Chuckerbutty (deceased) master of Gopaul Chunder Bose, plaintiff.

*Nuthee* No. 226, Dacoity in the house of Soondur Sahoo son of Rampershad Sahoo.

*Nuthee* No. 484, Dacoity in the house of Kally Doss Nag (Ghat darogah.)

case No. 175 shows, that a dacoity was committed in the house of Ramhurry Chuckerbutty of Aoree on the 26th May, 1841. The owner of the house was killed on the occasion.

The medical officer who examined his body stated in

reply to a question by the magistrate as follows:

"That none of the wounds mentioned in my letter of 25th ultimo, had the appearance of being inflicted with the cutting edge of an axe, but of all instruments the round back of the common axe or *kulharee* is far the most likely to have been used in causing the wounds of the nature formerly described."

The morning after the dacoity Muktaram Ghose chowkeedar and Markund Mytee gave information at the thannah, intimating the severity of the wounds received by Ramhurry, and that the dacoits had set fire to the house when they decamped.

Before the darogah could reach the village he received intimation of the death of Ramhurry.

He immediately took the depositions of Radhoo and two others, Kamilas, who were in the house at the time of the dacoity as also that of the servants of the house, viz. Gopaul Chunder Bose, Judhoo Mundul Pyke, Rajun Mytee, Goburdhun Mysal Kidmutgar and Kuchilee Dasee.

Of these, Goburdhun recognized among the dacoits Junkee and Beenud Pal. *Kachilee* swore to Jankee, Beenud, and Ram Koyal. Prisoner No. 10, recognized Jankee, Beeroo and Beenud

Jadhoo Mundul and Rajun Mytee. Pals also Ram Koyal, prisoner No. 10, of this trial and

Muktaram chowkeedar. They, at the time, mentioned their recognition of the above dacoits to Gopaul Chunder Bose and others who admitted this to have been the case.

On the 4th June the aforesaid were sent in to the magistrate, other accused parties were also forwarded by the police. On the 27th October, the magistrate committed for trial at the sessions, Jankee, Beenud, Beeroo and Mukhtaram Ghose, who were convicted by the Nizamut Adawlut to 14 years' imprisonment each with labor in irons, as per copy of warrant dated 22nd January, 1842; and instituted an enquiry into the character of Ram Koyal, from whom on the 27th November, following security for future good behaviour was demanded. It would have rendered the evidence more complete had these eye-witnesses been produced at this trial. Case No. 1, shows a dacoity to have been committed in the house of Sunkur Hajra. The record of the case has been lost from the foudary as I have

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\* Government  
*versus*

Dabee Barcoe and others  
Vide report No. 304, dated 25th  
October, 1856.

mentioned in the occasion of  
the trials noted in the margin.\*

The names of the prisoners in this trial do not appear to have transpired, but from the daily reports of the investigation lately sent by the darogah on the requisition of Captain Keighly, the three approver witnesses of this trial are shewn to have been arrested at the time, for this crime.

From the record No. 226, details of which have been given

† Ditto and Government  
*versus*

Kisto Sheet and others  
Vide Report No. 226, dated 31st  
July, 1856.

in two previous trials noted in the margin† it appears a dacoity was committed on the 29th of March, 1843, corresponding with the 18th Choit, in the house of Soondurnarain

the son of Rampershad Sahoo, of Ticcassy, and one hundred and sixty-three items of property plundered.

The next day Ramhurree Booya, a pyke in the service of prosecutor, swore to having recognized Bhobo Sunkur, a salt darogah, Moocheeram Sahoo and Davee Uddee. On the 13th idem Nehal Singh, deposed that he had knocked down two of the dacoits with his club; and would be able to recognize others.

One Manikram Singh burkundaz of *pharee* Bahirmookah under the thannah of Nermal reported under date the 22nd Choit, to the darogah, that on going his rounds on the 18th of that month he had ascertained one Moocheeram Jana of Mundopara was absent from his house; that on the evening of the date of his report Moocheeram had been brought to him by the chowkeedar and appeared with the mark of a blow on his eye-brow. Information of this was transmitted to the darogah of Kunchunnuggur, within whose jurisdiction the dacoity aforesaid had been committed.

The jemadar and Soondur Sahoo's brother-in-law, Bowannee



1857. Pridhan, were deputed and searched Moocheeram's house ;

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Nehal Singh, aforesaid who appears to have been with them swore to the said Moocheeram and Dhunnoo Bhooya Chowkeedar of his village and witness No. 2 of this trial, as having taken part in the dacoity. On the villagers being collected he pointed out Mudhoo Pater and several others ; among them Nagoo Das prisoner No. 1 of this trial.

In the pond of one Bannoo Aree a bow was then found, and his house being searched, a *gotee* sworn to by Bowannee Pridhan as plundered property was found. Nehal Singh also declared this man to have been with the dacoits. Bannoo Aree was unable to stand from some injury he had received he could not raise his arm. He excused himself by saying he had been wounded by a buffalo, but this did not appear to be the case. Moocheeram denied the charge, Dhunnoo Bhooya Chowkeedar of Mundopara was proved to have been absent on the night of the 18th Choit ; he stated that at one *pahur* of that night forty men belonging to Mundopara and other villages had assembled at Goopee Booya's house. On the 13th April, Musst. Champee and Mohun Nyeeah were arrested on the information of Nursingh Mundol Chowkeedar and Beeroo Booya.

Mohun Nyeeah, confessed to the jemadar his participation in the dacoity, and implicated Dhunnoo and Modhoo Booya, witnesses Nos. 2 and 3, of this trial, Moocheeram Jana, Nokowree Ghora, Modhoo Patur Chowkeedar, Bannoo Areesor Uddee, Nagoo Doss, and Goburdhun Doss prisoners Nos. 8 and 9, of this trial. Musst. Champee, the mistress of Dhunnoo Booya then stated that, fifteen or sixteen days before Goburdhun Doss, Nagoo Doss, prisoners of this trial, Mohun Nyeeah, Nokowree Khara, Nokowree Ghora, Babcoram Khara, Bunnoo Addee, Modhoo Pator, Moocheeram Jana, Pochoo Booya and others, Modoo Samoe, (convicted by the court on the 16th September last,) Dhunnoo Doss, witness No. 1, Dhunnoo Booya, and his brother, witnesses Nos. 2 and 3, of this trial, collected at Dhunnoo's house and after nightfall went forth to commit the dacoity ; that Modoo Samoe had before prepared a boat to cross the Sonia river ; that Dhunnoo and his brother did not return till daybreak, when the former gave her some of the property. This woman repeated her confession before the darogah, but Mohun Nyeeah denied his. Finally the darogah reported the case to be trumped up and this opinion was entertained by the magistrate at the time, though I can see no grounds for it.

The record of the case No. 484, shews a dacoity was committed in the house of Kalee Doss Nag, on 23rd June, 1852, when property valued at Rs. 2,380-11, was plundered. The prosecutor deposed to having recognized one Horee Peadah, on the part of Chundee Sasmol, and suspected Chundee Sasmol,

Goverdhun Jana, Haro Dulputee, Ujidhanath or Ram Mana, Dhunnoo Booya, Mudhoo Booya, witnesses of this trial, Gungaram Mundul, Ram Koyal prisoner No. 10 of ditto and others.

A very full detail of the records of this case was submitted to the court in the trial of Dhunnoo Khara, Dabee Rana, Gookool Pershad Jana and others.

It shews that four men, who confessed at the time their participation in this dacoity, named every one of the three approver witnesses both before the police and the magistrate as their accomplices in the crime. Those confessing prisoners were convicted and sentenced by the sessions judge on the 2nd November, 1852. The three approver witnesses now swear to Ram Koyal, who was suspected, at the time by the prosecutor, having been one of the gang that committed this dacoity.

The record of the foregoing cases, appear to me amply to corroborate the testimony of the approver witnesses, which may therefore be relied on as substantiating the guilt of the prisoners. Variations and discrepancies are to be found in their detailed evidence, and considering the life these approvers have led, it would be suspicious if such deviations were wanting.

I am fully aware of the contradictions into which Dhunnoo Booya has fallen, but they do not occur on points material to the issue of the case, or in regard to the essential question, whether the prisoners were with them or not in the dacoities charged? and I have a suspicion that these very contradictions may be made with a view to favor, as far as he dare, the prisoners; yet keeping within bounds to escape the withdrawal of his conditional pardon.

Ram Koyal is pronounced by the witnesses whom he has cited in his defence to be a bad character; and he is shewn by witness No. 12, Sonadhur Kara to have been absent from home on the night when the dacoity was committed in the house of Ramhuree Chuckerbutty. The other two prisoners are stated by their witnesses to be good characters, but their plea that enmity has actuated the witnesses against them, is not proved. As regards Dhunnoo Doss witness No. 1, none whatever is shewn to exist. With reference to the other two, and the plea that Nagoo Doss and Goburdhun prisoners Nos. 8 and 9 exposed the illicit intercourse of Mohun Nyeeah and Musst. Champee, the mistress of Dhunnoo, it is not clear that this occurred before the implication of the prisoners in the confessions noted in record No. 226. Had these two prisoners been alone mentioned, there would have been some show for this plea in defence, but Dhunnoo and his brother Mudhoo Booya as well as Dhunnoo Doss, i. e. all the witnesses of this trial, are named in those confessions, and further Champee also implicated her alleged paramour Mohun Nyeeah and twenty-four others.

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I cannot see any ground for presuming that this enmity has been brought into play by Dhunnoo Booya after a lapse of fifteen years. If it existed at all, it would have been strongest at the time when his disgrace was first exposed; and it will be seen by the details of the record that he then had a fine scope for its exercise. He was the chowkeedar of the village at the time, he stated that some forty men of Mundopara and other villages assembled on the night of the dacoity at Gopee Booya's. How easy would it then have been for him to have insinuated that these prisoners were of the party; or that he had seen them going to, or returning from Gopee's; or to have offered himself as a witness of this fact, and thus to have corroborated the confessions of Mohun Nyeeah and Champee. But not so; he is altogether silent on the subject.

I totally reject the defence on these grounds and considering the approver's evidence fully corroborated, convict the prisoners of having belonged to a gang of dacoits and recommend that they be imprisoned for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Counsel for prisoners, Nos. 8 and 9; Baboo Mehrchunder.

The counsel, who appears for Nos. 8 and 9, urges that the magistrate himself disbelieved the fact of the dacoity charged in the third count; that there is enmity between the approvers, and his clients; that the single statement of Musst. Champee is not sufficient for their conviction; and that it is quite possible that she may have falsely implicated some parties, as having gone in the dacoity, who had never done so. Ram Koyal No. 10 appeals generally on the record; but also states that having been once falsely accused, and punished, and having been unable to give security for good behaviour, he is always unjustly accused.

The witnesses, approvers, stated in their general confessions, recorded before the prisoners were apprehended, that the prisoners, Nos. 8, 9 and 10, were implicated, as now charged. These general confessions agree in essential particulars, with their depositions now made. The counsel has referred to the Magistrate having considered the dacoity charged in the third count to have been falsely got up. But the darogah's report, on which the magistrate proceeded, does not, in our opinion, warrant that conclusion. We stated this in the case of Debee Baroee and others, February 4th, page 99. In regard to the case charged in the second count, the statements of the witnesses are corroborated by that made at the time by Musst. Champee, and *not* by that only, (as counsel mentions,) but by the circumstances of Nehal Singh wounding Moocheeram Jana, a dacoit, and his (Nehal Singh's) recognition of the approver Dhunnoo Booya, and Nagoo Doss, No. 8, at the time.

The counsel admits, that he cannot prove or point out satisfactory proof of the alleged enmity between the approvers and his clients, or of that motive being the cause of their denouncing his clients. Ram Koyal is shewn by the record of case No. 175 to have been recognized at the time in the dacoity charged in the 1st count, and to have been mentioned by three witnesses. A conviction of some of the dacoits in this dacoity was recorded by the Nizamut Adawlut on the 18th January, 1842.

We do not see any sufficient reason to distrust the evidence of the approvers—witnesses, thus corroborated, as to the dacoities charged; and we sentence the prisoners to be transported for life under Act XXIV. of 1843.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

TRIAL No. 4, GOVERNMENT AND PYAH GAZEE

*versus*

REAZOODDEEN (No. 5,) NOEMOOLLAH ALIAS NOEB-  
OOLLAH (No. 6.)

TRIAL No. 5, GOVERNMENT AND MUSSUMUT  
ROOKEENEY KHANKEE

*versus*

REAZOODDEEN (No. 7,) NOEMOOLLAH ALIAS NOEB-  
OOLLAH (No. 8.)

TRIAL No. 6, GOVERNMENT AND SHEIKH EDOO

*versus*

REAZOODDEEN (No. 9,) NOEMOOLLAH ALIAS NOEB-  
OOLLAH (No. 10.)

TRIAL No. 7, GOVERNMENT AND SHEIKH BUKH-  
TOOR .

*versus*

REAZOODDEEN (No. 11,) NOEMOOLLAH ALIAS  
NOEBOOLLAH (No. 12.)

TRIAL No. 8, GOVERNMENT AND BAKHURPRO-  
DHANIA

*versus*

REAZOODDEEN (No. 13,) NOEMOOLLAH ALIAS  
NOEBOOLLAH (No. 14.)

CRIME CHARGED.—*Trial No. 4.*—1st count, No. 5, attempt at burglary by cutting the *bheeta* of the prosecutor's house; 2nd count, No. 5, being one of a wandering gang of robbers;

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Case of  
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Tipperah.

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Case of

REAZOODDEEN  
and another.

Appeal, based on release of an accomplice subsequently apprehended, and tried, rejected; the proof against the prisoners being sufficient.

1857. 1st count, No. 6, being an accomplice in the attempt at burglary in the prosecutor's house; 2nd count, No. 6, being one of a wandering gang of robbers.

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and another.

*Trial No. 5.*—1st count, No. 7, entering the prosecutrix's house by opening the door and stealing therefrom property valued at Rs. 8-9-9; 2nd count, No. 7, knowingly receiving and retaining the above; 3rd count, No. 7, being one of a wandering gang of robbers; 1st count, No. 8, being an accomplice in the 1st and 2nd counts, against the prisoner No. 7; 2nd count, No. 8, being one of a wandering gang of robbers.

*Trial No. 6.*—1st count, No. 9, committing a burglary in the house of the prosecutor and stealing therefrom property valued at Rs. 1-3; 2nd count, No. 9, knowingly receiving and retaining the above; 3rd count, No. 9, being one of a wandering gang of robbers. 1st count, No. 10, being an accomplice in the 1st and 2nd counts against prisoner No. 9; 2nd count, No. 10, being one of a wandering gang of robbers.

*Trial No. 7.*—1st count, No. 11, committing a burglary in the house of the prosecutor and stealing therefrom property valued at Rs. 5-8-3; 2nd count, No. 11, knowingly receiving and retaining the above; 3rd count, No. 11, being one of a wandering gang of robbers. 1st count No. 12, being an accomplice in the 1st and 2nd counts against prisoner No. 11; 2nd count, No. 12, being one of a wandering gang of robbers.

*Trial No. 8.*—1st count, No. 13, committing a burglary in the house of the prosecutor and stealing therefrom property valued at Rs. 1-15-3; 2nd count, No. 13, knowingly receiving and retaining the above; 3rd count, No. 13, being one of a wandering gang of robbers; 1st count, No. 14, being an accomplice in the 1st and 2nd counts of prisoner No. 13; 2nd count, No. 14, being one of a wandering gang of robbers.

CRIME ESTABLISHED.—*Trial No. 4.*—No. 5, attempt at burglary; No. 6, being an accomplice in the above attempt at burglary.

*Trial No. 5.*—No. 7, theft of property valued at Rs. 8-9-9, by opening the door; No. 8, being an accomplice in the above theft.

*Trial No. 6.*—No. 9, burglary and theft of property valued at Rs. 1-3; No. 10, being an accomplice in the above burglary and theft.

*Trial No. 7.*—No. 11, burglary and theft of property valued at Rs. 5-8-3; No. 12, being an accomplice in the above burglary and theft.

*Trial No. 8.*—No. 13, burglary and theft of property valued at Rs. 1-15-3; No. 14, being an accomplice in the above burglary and theft.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 26th July, 1856.

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*Remarks by the sessions judge.*—The prisoners under trial appear to have set out with a companion named Manoollah, who has hitherto eluded apprehension, on a regular marauding expedition in the Dacca district. Reazooddeen and Manoollah were the active thieves, the duty assigned to the prisoner Noemoollah *alias* Noeboollah; on account probably of his comparative youth and inexperience in such acts, being to remain in the boat and take charge of the plunder.

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Case of  
REAZODDEEN  
and another.

On the night of the 4th May last, the prosecutor in case No. 3, Pyah Gazee, was aroused from sleep by the noise occasioned by some one breaking through the flooring of his house. Running out, he saw two men making their escape. These, as it afterwards appeared, were the prisoners, Reazooddeen and Manoollah, the former of whom happening to trip over the root of a tree, was seized by the prosecutor and some neighbours. Manoollah escaped, but Reazooddeen named him as his companion, and led the way to the boat, where the prisoner, Manoollah, was found with a miscellaneous collection of property obtained by burglary and theft.

The prisoner, Reazooddeen, confessed fully and freely, not only to having attempted a burglary at Pyah Gazee's house, but to four previous successful acts of the same kind. The darogah acting on this information ascertained that Mussumat Rookeeneey, prosecutrix in calendar No. 4, had, in fact, been robbed of property of the value of Rs. 8-9-9; Sheikh Edoo, prosecutor, calendar No. 5, of property valued at R. 1-3, Sheikh Buktar, prosecutor, calendar No. 6, of property valued at Rs. 5-8-3, and Bakhur Prodhania, prosecutor, calendar No. 7, of property valued at R. 1-15-3, the aggregate of the stolen articles' value being Rs. 17-4-3. The plunder consisting chiefly of brass utensils, was all recovered in the prisoners' boat, and the prisoner, Reazooddeen, repeated his confession both before the magistrate and myself.

The prisoner, Noemoollah, explained his presence in the boat by describing himself as merely a boatman, but it is perfectly clear from theft following theft, and stolen property being each time brought to the boat; that he knew perfectly well what his companions were about, especially as in the course of his defence in the sessions court, he admits that he was promised a four-annas' share of the spoil as an inducement to remain silent.

The identity of the property and its previous loss by theft were proved to the entire satisfaction of the court and the Mahomedan law officer agreeing with me in considering the prisoners' guilt to be satisfactorily proved, I sentenced them as below, making a slight distinction in the prisoner, Noemoollah's favor as being probably the less confirmed thief of the two.

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*Sentence passed by the lower court.*—Reazooddeen to a consolidated sentence of 7 years' imprisonment with labor and irons in trial Nos. 4 to 8; Noemoollah *alias* Noeboollah to a consolidated sentence of 5 years' imprisonment with labor and irons in trials Nos. 4 to 8.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners have admitted in detail their participation in the crimes with which they are charged, before the police, and the magistrate, and before the sessions judge. The petition of appeal contains no grounds for this Court to interfere. Indeed there seems but a single ground for it having been presented, i. e., that an accomplice, Manoollah, (as set forth by the appellants) has been released. Whether this be the case or not, it is evident from the record that the accomplice was not apprehended when the appellants were put on their trial; and such an order regarding him, subsequently passed, cannot of itself alone, (as seems to be the idea of the appellants,) extenuate the guilt, or affect the conviction of the appellants. We reject the appeal.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

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GOVERNMENT

*versus*

MUSST. JOYSHOODA *ALIAS* KOOSHEE (No. 1,) JUGGERNATH JOOGHEE (No. 2,) RADHAKISHTO JOOGHEE (No. 3,) KOREERAM JOOGHEE (No. 4,) GOYARAM JOOGHEE (No. 5,) RAMPERSHAD JOOGHEE (No. 6,) TON GAZI CHOWKEEDAR (No. 7,) AND RAMMANICKYO JOOGHEE (No. 8.)

Tipperah.

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Case of  
MUSSUMUT  
JOYSHOODA  
and others.

CRIME CHARGED.—No. 1, wilful murder of Mussumat Kustoori by the administration of poison to cause abortion; No. 2, 1st count being an accomplice in the above crime; 2nd count, Nos. 2, 3, 4 and 5, accessory to the murder of Mussumat Kustoori before and after the fact; 3rd count, Nos. 6, 7 and 8 being accessories to the murder of Mussumat Kustoori after the fact.

CRIME ESTABLISHED.—No. 1, culpable homicide of Mussumat Kustoori by the administration of drugs to cause abortion; No. 2, being an accomplice in the above culpable homicide of Mussumat Kustoori; Nos. 3, 4 and 5, being accessories to the above culpable homicide of Mussumat Kustoori before and after the fact; Nos. 6, 7 and 8, being accessories to the above culpable homicide of Mussumat Kustoori after the fact.

Appeal rejected; various pleas urged by several appellants, overruled.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, in July 1856.

*Remarks by the sessions judge.*—The deceased woman is said to have become pregnant by Ramsoonder Jooghee, her brother's son, and consequently her own nephew. The prisoner Juggernath Jooghee, whose son is married to the deceased woman's daughter, Mussumat Fejji, witness No. 13, dreading the scandal which must necessarily ensue, were such a connection as that between the deceased and her nephew to become known, sent by the advice of the prisoner Goyaram Jooghee (No. 5,) for the prisoner Mussumat Joyshooda *alias* Kooshee, a woman of the barber caste, and gave her two rupees to cause abortion; some medicine was accordingly administered on Monday; the desired effect followed on Tuesday and on Wednesday the deceased expired. The prisoners Juggernath Jooghee (No. 2,) Radhakisho Jooghee (No. 3,) Kareeram Jooghee (No. 4,) Goyaram Jooghee (No. 5,) Rampershad Jooghee (No. 6,) Ton Gazi Chowkeedar (No. 7,) and Rammanickyo Jooghee (No. 8,) after being defeated in an attempt to bury the body, sought to conceal the true character of the woman's death by reporting it at the thannah as the consequence of a snake-bite, and they accordingly made a statement to that effect at the police station of Begumunge and obtained permission to inter the corpse. An enquiry was, however, immediately instituted and the result was that all the prisoners, with the exception of Goyaram Jooghee (prisoner No. 5,) and Ton Gazi (prisoner No. 7,) confessed the real circumstances attending the woman's death.

The prisoners pleaded *not guilty*.

Witness No. 13, Mussumat Fejji, deposed to her mother's pregnancy, to the arrival of a woman of the barber caste, who, she knew, (although prevented from being present at the moment) administered medicine to the deceased, the effects of which were delivery of a foetus (on the third month) on Tuesday, and death on the following evening.

Witness No. 14, Hurry Joognee is the prisoner Juggernath Jooghee's wife. She deposed that her husband acting on Goyaram Jooghee's advice sent for the prisoner Mussumat Joyshooda, who, in her presence, administered two pills to the deceased, who died on the 2nd night after taking them. She also spoke to the attempt to bury the body and its prevention by Moonshree Gazi Chowkeedar. Her evidence, especially in the magistrate's court, was evidently that of an unwilling witness, but, as already remarked, she is the wife of one of the prisoners.

Witnesses No. 15, Konjee, No. 17, Bindabund Jooghee deposed to the deceased woman's pregnancy and to her death being attributable to drugs, which, they heard, had been

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administered to cause abortion, after which an attempt was made to bury the body clandestinely.

Witness No. 16, Moonshee Gazi, deposed that having heard of the death of a pregnant woman under suspicious circumstances and having ascertained from the prisoner Goyaram Jooghee (No. 5,) that there were grounds for those suspicions, he interfered to prevent the burial of the body, and advised the prisoner Ton Gazi Chowkeedar (No. 7,) to give information to the thannah.

The statements of the prisoners Juggernath Jooghee (No. 2,) Radhakishto Jooghee (No. 3,) Koreeram Jooghee (No. 4,) Goyaram Jooghee (No. 5,) Rampershad Jooghee (No. 6,) Ton Gazi Chowkeedar (No. 7,) and Rammanickyo Jooghee (No. 8,) at the thannah (Radhakishto, prisoner No. 3, on solemn affirmation, the rest without it) that the deceased died in consequence of a snake-bite, were proved by witnesses Mahomed Diam (No. 1,) and Mahomed Gazi (No. 2.)

The body, when exhumed, was in a state of decay, which prevented all medical investigation.

The prisoners Mussumat Joyshooda *alias* Kooshee (No. 1,) Juggernath Jooghee (No. 2,) Radhakishto Jooghee (No. 3,) Kooreeram Jooghee (No. 4,) Rampershad Jooghee (No. 6,) and Rammanickyo Jooghee (No. 8,) confessed both at the thannah and before the magistrate, and the following is an abstract of their confessions.

Mussumat Joyshooda *alias* Kooshee (prisoner No. 1,) stated both at the thannah and before the magistrate, that having been taken by the prisoners Juggernath Jooghee (No. 2,) and Koreeram Jooghee (No. 4,) to see the deceased, she found from certain appearances, that some medicine had already been administered to her by the former prisoner, being furnished with some poison and *koor* by the same prisoner, she administered them, when ground by his wife, to the deceased. Expulsion of the foetus followed and then death, hearing of which the prisoner returned her fee of rupees two.

The prisoner Juggernath Jooghee (No. 2,) stated that he brought the female prisoner to his house by the advice of the prisoner Goyaram Jooghee (No. 5,) that medicine was twice administered by the said female prisoner, the first dose failing in its expected effects. That after death, acting again on the prisoner, Goyaram Jooghee's advice, an attempt was made to bury the body secretly and hurriedly, and the attempt failing, a report was made at the thannah, that death had been caused by the bite of a snake.

Radhakishto Jooghee, prisoner No. 3, stated that he was cognizant of all the circumstances set forth in his father, Juggernath Jooghee's confession, assisted in the attempt to bury the body, and was one of his party, who deposed at the thannah to death resulting from a snake-bite.

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Koreeram Jooghee, prisoner No. 4, admitted that he accompanied the prisoner Juggernath Jooghee, No. 2, to the house of the female prisoner, and promising her a fee of rupees two induced her to accompany them back and administer medicine to induce abortion. After the deceased expired, he joined in the representation made at the thannah, that death had been caused by a snake-bite, having been promised two rupees worth of paddy as an inducement to join in the falsehood.

Rampershad Jooghee, prisoner No. 6, stated he had heard of the pregnancy, of the means adopted to remove it, and of the woman's death, which he subsequently joined the other prisoners in ascribing to the bite of the snake.

The prisoner Rammanickyo's (No. 8's) confessions were to a similar effect.

Such were the statement of the confessing prisoners both to the police and to the magistrate.

The defence in my court was either a denial of personal guilt, or an assertion that the deceased had, in fact, died in consequence of the bite of a venomous snake.

The prisoners Goyaram Jooghee, (No. 5,) Rampershad Jooghee (No. 6,) and Rammanickyo Jooghee (No. 8,) alone called witnesses, who, however, proved nothing to weaken the conclusions the court is disposed to draw from the prisoners' confessions and the evidence in support of prosecution.

The Mahomedan law officer found the prisoners guilty (the prisoner Juggernath Jooghee (No. 2,) on the first count of the two indictments against him) and pronounced them liable to *tazeer*.

In this verdict I concur. The confessions aided by the evidence appear to me to leave no doubt whatever of the guilt of each and all of the prisoners, on whom, with regard with what I conceive to be the several degrees of their culpability, I pass the following sentence.

Prisoner Musst. Joyshooda *alias* Kooshoo (No. 1,) to seven years' imprisonment with labor suited to her sex.

Prisoner Juggernath Jooghee (No. 2,) to five years' imprisonment with labor in irons.

Prisoner Radhakishto Jooghee (No. 3,) Koreeram Jooghee (No. 4,) and Goyaram Jooghee (No. 5,) to three years' imprisonment and a fine of 50 rupees each payable on or before the 15th proximo, and in default of such payment to labor.

Prisoner Ton Gazi Chowkeedar (No. 7,) to eighteen months imprisonment and a fine of 30 rupees payable on or before the 15th proximo, and in default of such payment to labor.

Prisoners Rampershad Jooghee (No. 6,) and Rammanickyo Jooghee (No. 8,) to one year's imprisonment and a fine of 20 Rs. each payable on or before the above date, and in default of such payment to labor.

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and others.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners, with the exception of Radhakishto No. 3, have appealed to this Court, but have stated nothing in their petitions of appeal to induce the Court to interfere with the decision of the sessions judge. Musst. Joyshooda's (No. 1's) appeal consists of a mere denial of the charge. Juggernath No. 2, denies the charge, and pleads ill-will on the part of the chowkeedar, as having caused a false complaint, and that the darogah compelled him to confess; and he urges his age and infirmity as a ground of release. Koreeram No. 4, and Goyaram No. 5, deny the charge, and state that Juggernath has implicated them from ill-will; and that there is no legal prosecutor. Prisoners Nos. 6 and 8, deny the charge and Ton Gazi prisoner No. 7, pleads that he has been accused from ill-will by Moonshee Ghazee Chowkeedar to whose office he has been appointed. The prisoners, with the exception of Goyaram and Ton Gazi, confessed before the darogah and to the magistrate, and it is proved that their confessions were voluntarily given; and we believe them corroborated as they are by the evidence of independent witnesses, to contain a true statement of facts. The charge of being an accessory before and after the fact against the prisoner Goyaram, is proved; and the prisoner Ton Gazi, admits that after he had accompanied the other parties to the thannah, where they stated to the darogah that the woman had died of a snake-bite, he learnt on his return that the deceased had died from medicine given her to procure abortion; but that he made no report to the thannah or mention of the fact. The Government is co-prosecutor, and thus sufficiently meets the objection on that point. We reject the appeal.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

DEYGOO SINGH (No. 18,) PURSHAD ROY (No. 19, Bhaugulpore.  
 APPELLANT) AND BIJLEE ROY (No. 20, APPELLANT.)

CRIME CHARGED.—No. 18, perjury, in having on the 29th February, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Barh, “that Abdool Kurreem, Ghumundee Lal, Jhunnun Singh, Seyka Singh, Beharee Singh and Tookun Singh, were conspiring at the zemindaree cutcherry to set fire to a wood-stack and that eventually about 2 P. M. I and Tookun Singh set out, taking an earthen-pot with fire in it, and some date fibres which Tookun Singh got at the cutcherry. I accompanied him; on our arrival at the stack, Tookun Singh took out fire from the earthen pot and *lighting the date fibres set fire to the stack*,” and in having, on the 30th July, 1856, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Bhaugulpore, “that since a month before the occurrence, I have been living in the village of Tirmohan, three *coss* from Mokameh, where I cultivate land, *I have not seen any one setting fire to the Mokameh wood-stacks*, but the deputy magistrate told me that I should be released if I proved this case of stack-burning, on which I said that I had never done any thing of the sort, so I could not, then Bhugwan Tewarree, burkundaz, took me into the cutcherry, where he made me sit down before the Moonshee and he began to dictate to the Moonshee whatever he pleased, I remaining silent; after all was recorded, Tewarree and the mohurrir told me to sign some paper, which I did, and I have heard from Musst. Soomnee Punbhurin, that Deybee Singh set fire to the stack;” such statements being contradictory to each other on points material to the issue of the case.

No. 19, perjury, in having on the 29th February, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Barh “that *I saw* from a distance of two *bans*, Tookun Singh and Deygoo Singh standing near the stack, lighting date fibres; when I arrived close to the stack, I saw that *Tookun Singh had lighted some date fibres, and thrown them on the stack*, after doing so, both Tookun Singh and Deygoo Singh ran away northward and the stack began to blaze,” and, in having on the 30th July, 1856,

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Appeal re-  
 jected; but  
 sentence of  
 a prisoner mi-  
 tigated, no  
 reason appear-  
 ing for so se-  
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intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Bhaugulpore "that Bijlee Roy chowkeedar and Bhugwan Tewarree took me before the darogah and Tewarree said to me that Government wood had been burnt, that I must prove the case, saying this, the darogah took my deposition telling me to accuse Tookun Singh and Deygoo Singh, which I did, according to the order of the darogah. The darogah then *chillaned* me to Barh, where I made no voluntary deposition, Bhugwan Tewarree dictating from my thannah deposition. *I have not seen anybody set fire to the stack;*" such statements being contradictory to each other on points material to the issue of the case.

No. 20, perjury, in having on the 31st July, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Bhaugulpore "that I saw Jhummun Singh, Abdool Kurreem, telsee'dar, Chuttoor Singh, Gopaul Singh, Seykha Singh, Deygoo Singh, and Tookun Singh, sitting down together and heard Jhummun Singh say that the railway people take both shares of wood, but only pay half value, and that nothing more was said on that occasion," again on being cross-questioned *answered* "that *they were consulting about setting fire to the stack;*" and again on questioning him on this point that you have mentioned above that they were only saying that *the railway gentlemen give but half value, and that they said nothing more;* and now you say that they were consulting to burn down the stack, What is the cause of the contradiction? *answered* "that whatever I have said at the thannah is right, and whatever I have deposed here is wrong." Such statements being contradictory on points material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. F. A. Vincent, deputy magistrate of Barh.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 17th October, 1856.

*Remarks by the officiating sessions judge.*—This case was tried at Monghyr with the aid of a jury\* on the 17th October 1856.

The prisoners pleaded *not guilty*.

The circumstances of this case will be found amongst those of acquittals for July 1856, No. 4, when the prisoners committed perjury deposing contradictory to a point material to the issue of the case. Nos. 18 and 19 positively denied having given the depositions before Mr. deputy-magistrate Vincent at Barh. From the evidence adduced on the present trial, it appears that all the prisoners did appear in the deputy magistrate's court

and give their testimony. Witness, No. 1, identifies them, having written their depositions while Noor Ali, No. 4, administered the oath, when they deposed to the circumstances therein detailed. They also appeared before the sessions court, and again after the oath had been administered by witness, No. 5 (the *serishladar* writing their evidence) deposed, and denied their former statements, which were attested by witnesses Nos. 2 and 3. Prisoner No. 20, gave contradictory statements on oath on the trial before the sessions court.

The prisoners, in their defence, merely plead that they had not committed perjury, but spoke the truth, and having no witnesses to corroborate their statements, the jury returned a verdict of guilty, in which I concurred, and sentenced them accordingly.

*Sentence passed by the lower court.*—Nos. 18 and 19 each to three years' imprisonment and No. 20 to 5 years' imprisonment, all with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We have carefully perused the evidence to the depositions, recorded as those of the appellants, having been really their's, and having been duly taken on oath; as also the depositions themselves; and we find the charge duly proved. We reject the appeal. But not seeing any reason for the more severe sentence upon Bijlee Roy chowkeedar, consider three years' imprisonment sufficient.

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Case of  
PURSHAD  
ROY  
and others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

BYDEE DOSS.

Midnapore.

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**CRIME CHARGED.**—Perjury in having intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the deputy magistrate of Nugwa, in the case of dacoity in the house of Kishore Mannah; 1st, that on Monday, the day of the celebration of *Oshtomy Jattr* in Aligram saw *Beesoo Bydee and Beenoo Rana sitting together* and heard the two former say "Bulram Doss and all the others will come, we will go and commit the theft;" secondly that Bydee, Sutroo, Beesoo and Seelee Kurnat *had really invited* him to join in the dacoity as he had stated to the darogah but he through fear had, till questioned, omitted to mention this to the deputy magistrate; thirdly, that *he did really meet Joy Doss* and Sumbhoo

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Case of  
BYDEE DOSS.

Appeal re-  
jected; perju-  
ry being prov-  
ed; and no  
ground shewn  
for interfering  
with the sen-  
tence.

1857. Mytee; that the former admitted he had received a *sarce*; and the latter his receipt of a "*chowree mooree*" and that he had told the darogah that the property would be found on search, and fourthly, that he *had met Bulram* on the Wednesday succeeding the *Oshtomy poojah*, that Bulram then admitted a theft had been committed, and, having on the 27th March, 1856, corresponding with the 16th Choitree, 1263, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Midnapore; 1st, that on the 20th Aughran Monday at *jattra* saw *Bulram, Beesoo, Bydee Nookool and Rugahoo Dass* were seated together, and making some enquiry or consultation; but to what purport he knew not; secondly, that these four men Bydee, Sutroo, Beesoo and Seelee Kurnat *had not invited* him to commit the dacoity; thirdly, he *did not meet Joy Dass*, but that Sumbhoo Mytee had told him that one Bydee Raool gave him a "*chowree mooree*," and fourthly, that he *never met Bulram* on the Wednesday; such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 22nd August, 1856.

*Remarks by the officiating sessions judge.*—The two contradictory depositions are proved to have been given on oath intentionally and deliberately by the prisoner on points material to the issue of the case. The last deposition before the sessions was no doubt given to screen from conviction, as far as in his power lay, the parties who were charged with the dacoity, amongst whom was his own cousin Joy Dass.

The jury who sat on this trial find the prisoner "guilty," and concurring with them I have sentenced the prisoner to four years' imprisonment with hard labor.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has been clearly convicted of wilfully and deliberately making two contradictory statements on oath on a point material to the issue of the case; the prisoner's object apparently being to screen his cousin, Joy Dass; who with others, had been implicated in a charge of dacoity by the prisoner's first deposition taken before the deputy magistrate, on 17th December, 1855. After a perusal of the record, we consider that the petition of appeal contains no sufficient plea for interfering with the sentence passed by the sessions judge, and we therefore reject the appeal.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND OTHERS

*versus*

ROOPNARAIN (No. 13,) BULLOO (No. 14,) TEKUN SINGH (No. 15,) KHEERUN SINGH (No. 16,) SUNT-SURRUN DOSS (No. 17,) SISWUN ROY (No. 18,) AND MUHADEO LALL (No. 19.)

Patna.

1857.

CRIME CHARGED.—Affray attended with homicide of Sheikh Furreed, Panchoo, Ally Yar and Jodhun, relatives of the prosecutors.

February 19.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of the city of Patna.

Case of  
ROOPNARAIN  
SINGH and  
others.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 2nd December, 1856.

*Remarks by the sessions judge.*—Prisoners plead *not guilty*.

Prisoners

There were seventeen persons Nos. 3 to 19 inclusive, committed on the above charge, from Nos. 3 to 12, on one side from Nos. 13 to 19, on the other. Those from Nos. 3 to 12, in all ten persons were acquitted without being put on their defence, the law officer agreeing with me that there was no case against them made out in the prosecution. With regard to prisoners

convicted on  
sufficient evi-  
dence. Coun-  
sel's several  
pleas in appeal  
being overrul-  
ed.

- \* No. 1, Oodun Dosadh.
- 2, Dulleep Koombar.
- 3, Akkul Burbai.
- 4, Sheikh Ahmad Ally.
- 5, Sheikh Shurtun.
- 6, Sheikh Rumzan Ally.
- 7, Sheikh Gundowree.
- 12, Rughoonath Coirce.
- 13, Rohce Coirce.
- 14, Jhundoo Coirce and
- 15, Chunroo Singh.

Nos. 13 to 19 inclusive, it is clearly proved in evidence by witnesses\* Nos. 1, 2, 3, 4, 5, 6, 7, 12, 13, 14 and 15, that a party of men from mouzas Umeerpore and Nugaown, including all the prisoners, from Nos. 13 to 19 inclusive, were about to bund up an opening on the Umeerpore estate from which the water was escaping

much to the benefit of the *maliks* and cultivators of the adjoining estate of Mohunpore. The Mohunpore people, assembled at some little distance throwing up earth-works of their own, seeing the demonstration from Umeerpore, sent six men of their party across a *baha* or *nulla* or rather deep ditch from twenty to thirty feet wide, which divided them from the Umeerpore people, to remonstrate against bunding up the opening, which by its flow of water was relieving Mohunpore from destructive inundation. These six men were unarmed and waded across the *baha* at a ford up to their chests, on approaching the *nigar* or opening which the Umeerpore party were bunding up and



1857. remonstrating against the act, they were set upon with *lattices*  
 February 19. and spears and four of them driven into a corner where the  
 Case of water was deep and swift, they were here beaten down and  
 ROOPNARAIN thrown dead or dying into the water. The bodies of three of  
 SINGH and those named in the charge were found at various times from  
 others. two to four days afterwards, identified by their friends, and

- \* No. 15, Chumroo Singh. local inquest held on the re-  
 „ 16, Kamdar Khan Bur- mains. Witnesses from Nos.\*  
 kundaz. 15 to 24, depose clearly to the  
 „ 17, Bhuttun Khan Bur- marks of blows on the heads  
 kundaz. of Ally Yar and Panchoo and  
 „ 18, Chedee Burkundaz. to a wound in the belly of Ally  
 „ 19, Phagoo Gorait. Yar below the navel, as if  
 „ 20, Rumzan Ally. made by a thin piece of iron  
 „ 21, Chumroo Sonar. or spear-head. The body of  
 „ 22, Deela Coormee. Jodhun is less clearly proved  
 „ 23, Goordial Singh. to have been wounded owing  
 „ 24, Bhuttun Sao.

to great decomposition and swelling. The body of Furreed was not discovered. All the bodies found were too much decomposed to bring in for the civil surgeon's inspection.

- The statement on the other side, deposed to variously and  
 conflictingly by witnesses Nos.†  
 † No. 8, Boodhun Coiree. 8, 9, 10 and 11, is, that at the  
 „ 9, Dial Muhtoe Coiree. time in question a large body  
 „ 10, Khurrug Singh Bah- of Mohunpore people were  
 mun and assembled near the *baha*, on  
 „ 11, Soobun Singh Bahmun. the south or Mohunpore side

while six of their party had crossed it and were engaged in cutting the *nigar* or bund in question, when Jykurn and Fukeera Burails of Umeerpore questioned them as to why they were so employed and told them to desist, calling some fifteen men of Umeerpore to prevent their letting off the water, on which the six men of Mohunpore ran away, two of them escaping across the *baha*, but the other four being drowned in attempting to cross the water. This evidence further states that the Mohunpore men were drunk and rolling in their gait. They state variously as to their arms; one witness says they had *lattices* and *abbas* (a flat stick used for earth-work), another that they had *koodals*. The Umeerpore men they say had no arms or weapons nothing but *arwas* (short sticks used for bullock-driving.)

The prisoners in their defence plead either distinct *alibis* or ignorance of all connection with the affray. Roopnarain gives in a written defence where he first impugns the evidence as to the bodies found being those of the persons said to have been killed, says if there was truth in the witnesses' statements the bodies would have been sent into the sudder station; that there was no former dispute; that the *nigar* or water-course in question

was in Umeerpore and not in Mohunpore, and he was not on the spot at the time in question; that the Umeerpore people are not proved to have been the aggressors; that the Mohunpore men were drunk and went into the water where it was deep and were drowned by their own act.

The law officer brings in a verdict of guilty of the crime charged in the calendar against prisoners Nos. 13 to 19 inclusive, as regards the culpable homicide of Ally Yar and Panchoo in which I concur.

The body of Jodhun was too far gone to be satisfactorily identified and that of Furreed was not found at all. There is strong direct evidence as to these two men also having met with their death at the hands of the prisoners, but seeing that the proofs with regard to Ally Yar and Panchoo are irrefragable, I have thought it best to convict of their homicide alone.

The evidence for the defence is of the weakest and most ordinary description, I place no confidence whatever in its statements. It is clear from the revenue survey maps which I have carefully examined and compared, that the Mohunpore people had at the time of its construction no acknowledged or undisputed holding on the north of the *baha*. The map in the record marked by the magistrate gives a very fair idea of the localities as ascertained with greater precision by the survey plans procured from the collectorate. There seems no reliable evidence of the Mohunpore people having been in any way the aggressors; but even if they had, to save their own lands from complete submersion in a season of unprecedented inundation, cut a bund within their neighbour's boundary (the cutting of which it is not at all clear could injure that neighbour) I see no extenuation of their barbarous treatment by the Umeerpore party. The illegal act therefore, mentioned by the magistrate in his abstract of grounds of commitment, the suspicion of which probably prevented his committing the Umeerpore people on the charge of wilful murder, cannot be considered in mitigation of the punishment due for an aggravated and cruelly elaborated case of culpable homicide. I convict prisoners No. 13, Roopnarain Singh, No. 14, Bulloo, No. 15, Tekun Singh, No. 16, Kheerun Singh, No. 17, Suntsurrun Doss, No. 18, Siswun Roy, and No. 19, Muhadeolall, of the culpable homicide of Panchoo and Ally Yar and with reference to the very aggravated nature of the crime, recommend that they may be imprisoned with labor in irons for a term of fourteen years in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The facts, as found by the sessions judge, appear to be that the people of Umeerpore attempted to close a water-course through which the water covering the Mohunpore lands was escaping: that six of the Mohunpore people crossed the *baha* or *khal* which divided the Umeerpore

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and Mohunpore villages to remonstrate with them; that they were attacked by the Umeerpore people, armed with *latties*, *soolfies*, and other weapons; beaten; and four of their number killed; and their bodies thrown into the "*baha*."

Mr. Allan, counsel for the prisoners, Nos. 13, 14, 15 and 16 pleads, 1st, that the Court must look to the question of the rights of the parties; that if the bund be within the Umeerpore estate, the Mohunpore people were doing an illegal act in attempting to remove the bund, and the defendants were exercising a legal right in preventing its removal; that the magistrate records that the Mohunpore people had no right to be on the north side of the *baha*, where, he says, the conflict took place; but it had to be shewn whether the Mohunpore people had landed, and had been beaten by the Umeerpore people, or that the latter merely prevented them from landing; and it might fairly be inferred that being exhausted, with swimming, the deceased men, owing to the force of the current, were drowned in their endeavours to reach again the opposite bank, and that should this prove to be the case, the charge, as now brought against his clients, could not stand; 2nd, that the judge has acquitted the Mohunpore people (prisoners, Nos. 3 to 12;) but if they were present looking at, and not trying to prevent the affray, they should have been convicted as aiding and abetting in the affray; 3rd, that the bodies were not found till some days after the occurrence, and in such a decomposed state that it would be impossible to observe the marks of blows; and as to the open wounds on one body, that fact cannot, considering the untrustworthy character of mofussil local inquests, and the interested evidence for the prosecution, be considered conclusive proof of the deceased having been assaulted and killed; and that, without medical evidence, the exact cause of death must remain uncertain, i. e. whether the deceased men met their deaths from blows, or from drowning; 4th, that the Umeerpore people were engaged in a legal act; and it is improbable that they should have gone armed, when their object was merely to repair a bund; further, that the sessions judge should have seen that the case for the prosecution had been duly made out, and not relied, as he had done, on the weakness of the defence; moreover, that while the sessions judge concurred in the verdict of culpable homicide given by the law officer, he assigned no specific reasons for this opinion; 5th, that had the charge been true, the relations of the deceased would have given information to the police without delay; but three days were allowed to elapse before any information was given; and none of the relatives came forward till the darogah proceeded to the spot, some four or five days after the affray was said to have taken place; 6th, that the first report of the matter sent to the thannah, differed materially from what came out in the subsequent investigation, as to the parties and to the cause of

death, and that the evidence of Kewul Singh, Gomashtha, acquitted by the sessions judge, should have been taken on oath, for no reliance could be placed on his letter to the police jemadar nor on his subsequent statement to the darogah, which, however, had been allowed to have weight with the magistrate and sessions judge. It was further contended that there was not an independent witness to prove the case, as stated by the Mohunpore people, all being on the contrary interested; that if one or two people, not of the Mohunpore village, had given evidence, it was necessary before admitting their evidence as trustworthy, to ascertain what they were doing at the spot at that exact time, and why they were there so opportunely.

Baboo Ashutosh, counsel for prisoners Nos. 17, 18 and 19, stated that as regarded his clients, Nos. 18 and 19, he had nothing to add to the remarks made by Mr. Allan, which applied equally to his clients. As regards the appellant No. 17, he remarked, that he was a Mohunt, living in mouzah Nugwah, with two or three disciples, and, having no interest in any land, was not likely without any object to join himself to a party of rioters, to commit a breach of the peace; and that none of the Mohunt's people were present. He adds, that it is evident, that the deceased were drunk, and were drowned in attempting to return across the *baha*; that their relatives made no complaint for four or five days after the occurrence, when this false charge was brought forward.

We observe that it is scarcely possible from the record to determine exactly how the dispute arose; whether it was owing to the act of the Mohunpore people, who had crossed the "*baha*" to cut a bund to let the surplus water which had inundated Mohunpore, escape; or whether the Umeerpore people wished to stop up a water-course by which the water from Mohunpore did, in ordinary years, find its way sufficiently easily; but which, owing to the excessive rains of the past year, was then a cause of injury to the Umeerpore lands; this much, however, appears certain from the evidence, and the admissions of the prisoners of the second party, viz. that six of the Mohunpore people were on the north, or Umeerpore side of the "*baha*;" and Bulloo Dosadh prisoner No. 14, one of the appellants, in his defence before the magistrate, fully confirms what is stated by the witnesses for the Mohunpore people, viz. that four men, from the Mohunpore party, came across the *baha*, and the Umeerpore people beat them and threw them into the water. That the deceased were beaten, is proved by the marks on the bodies of Pauchoo and Luttoo *alias* Ally Yar, the former discovered on the morning of the 17th, and the latter on the evening of the same day, and both bearing unmistakeable marks of battery, the former with a severe wound on the left side of the head, and the latter shewing a blow on the head, and a wound as of a spear, above the

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navel. These bodies had been in the water, the one less than the other, about forty-eight hours; and though decomposition had commenced, it would be by no means impossible to ascertain that external injuries of these specific descriptions had been inflicted. The plea urged by counsel, that the deceased being unable to land were drowned in their endeavours to regain their own side of the "*baha*," is contradicted by the marks on the bodies, by the evidence of witnesses, some of whom do not live at Mohunpore, and by the statement of the prisoners, who acknowledge that the deceased were on the Umeerpore side of the "*baha*," and by the admission of Bulloo Dosadh, prisoner No. 14, above alluded to, who saw the deceased beaten, and thrown into the water by the Umeerpore people; and by the total absence of all evidence in support of the conjectural plea advanced. As regards the delay said to have occurred in giving information to the police, and the neglect exhibited by the relatives of the deceased, we find that the affray occurred in the afternoon of the 15th, after 4 P. M. and that Kewul Singh gomashtah, sent immediate notice through the chowkeedar, Kurruum Goraite, to the jemadar stationed at Nya Serai. He was not at the pharee, but received the intelligence on the morning of the 16th, at mouzah Joafir, and forwarded the gomashta's letter by the chowkeedar to the thannah, and himself started for Mohunpore. The chowkeedar reached the thannah on 17th, being delayed, as he says, by the inundated state of the country. As the gomashtah had sent intimation to the thannah, it was unnecessary for the relatives of the deceased to lodge a complaint. The letter sent by Kewul Singh merely states that the Umeerpore people had beaten and killed some of the Mohunpore people; and is, therefore, not contradictory to his subsequent statements, nor to the facts arrived at on the local investigation. It is urged by counsel, that this letter and the statement made by Kewul Singh, have had weight with the local authorities; and that they should not have been admitted in evidence; and the deposition of Kewul Singh should have been taken on oath. We do not, however, see this in the judge's decision; nor does the counsel shew in what manner this influence has had effect; and we find from the record that Kewul Singh and others of Mohunpore, on the one side, and Roopnarain Singh and others of Umeerpore, and Nugwah, on the other, were apprehended, and forwarded by the darogah, as charged with affray; and on this charge were committed by the magistrate to take their trial before the sessions. After the hearing of the evidence for the prosecution, Kewul Singh and the other men of Mohunpore were acquitted, and the men of Umeerpore convicted, on the testimony of the witnesses, some of whom do not belong to Mohunpore, but were passing by in pursuit of their own business. We do not perceive the necessity for Kewul Singh's evidence being

taken on oath ; and he adopted the usual method of giving the information which his position required him to give, to the police.

With regard to the objection raised by the counsel for the prisoner Satsurun Mohunt, No. 17, it is sufficient to observe that his complicity is proved by the evidence of all the witnesses ; and that in the absence of any ill-will, (and such, is not pleaded to exist,) it is unlikely that a person of his character should have been needlessly and falsely charged, had he not been present ; and the only reason he can assign for being implicated is, that he would doubtless have told the truth to the injury of the Mohunpore people while by charging him with the offence they got rid of his testimony against them.

Admitting for argument's sake that the case, as stated by the Umeerpore party, be correct, and that certain parties from Mohunpore had crossed over the "*baha*," and were cutting the bund which protected the Umeerpore lands, yet the injury which might have been occasioned to their crops, and the assumed illegal act of crossing into the Umeerpore lands, can afford no justification for a violent attack made by armed people on such trespassers. The prisoners had a legal remedy for any injury that might have been caused by such acts of the Mohunpore people. We therefore reject the petitions of the appellants, and sentence all the prisoners, as recommended by the sessions judge, to 14 years' imprisonment with labor and irons, in banishment.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

HAROO JANAH GORAI.

CRIME CHARGED.—1st count, dacoity, on 26th April, 1838, in the house of Urjoon Patthur, inhabitant of Dukhin Nakorah, thannah Pertubpore ; 2nd count, dacoity, on the 14th April, 1844, in the house of Goluck Adak, inhabitant of Basdebpore, thannah Musnendpore ; 3rd count, dacoity, on 7th February, 1853, in the house of Beechoo Sattoorah, inhabitant of Sindoor Monee, thannah Luhung ; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent, assistant dacoity commissioner and joint-magistrate, Midnapore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 5th December, 1856.

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SINGH and  
others.

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JANAH.

Prisoner convicted and sentenced under Act XXIV. of 1843, on testimony of ap-  
praver—witnesses corroborated by independent evidence.

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*Remarks by the additional sessions judge.*—Before the prisoner was arrested he had been denounced by three approvers as having been concerned with them in the three dacoities, entered in the calendar and others. These approvers have to-day given testimony on oath to precisely the same effect, and have re-described the details of each of the offences with great accuracy. Their original confessions were made on the 30th March, 1855, 12th December, 1855, and 26th March, 1856, respectively. The evidence of each approver, in each of the first two charges, has been sufficiently corroborated by the denunciation *at the time* of confessing associates who are not now present. Such evidence, though in support of the testimony of but one approver witness, was deemed sufficient in the two cases noted in the margin\* and is to my mind perfectly satisfactory in this instance.

\* Sudder Nizamut Adawlut, 1856.  
I. 195.

Sudder Nizamut Adawlut, 1856.  
I. 742.

Budee Mundul and Sukoo Santrah now convicted dacoits, were arrested at the time for the Dukhin Nakorah dacoity (count 1st) both confessed, both to the police and subsequently to the magistrate; and both declared the prisoner was one of the party both times. Their confessions in the mofussil were recorded on the 30th April 1838, or the 4th day only after the dacoity; and their confessions at the sudder station, five and six days later, by Mr. Gilmore then magistrate here, as attested by him in the usual form. A brother of the approver witness, Brindabund Mahitee, was one of the ringleaders in this affair, his name was Mohun Mahitee; and several of the persons taken up for the offence at the time and ultimately convicted, spoke thus of Mohun Mahitee; one of them, Sukoo Santra, coupling with his (Mohun's) name that of his brother the *approver witness*, Brindabund. It is not to me clearly shewn that the "Suroop Mahitee" denounced by others of the then prisoners, was the approver Brindabund *under an alias*.

Again in the second dacoity at Basdebpoor, in which were the approver witness, Muddoo and the prisoner, two suspected persons were seized at the time, named Pershad Munna and Bhoobun Daloe. Pershad Munna admitted his guilt to the police on 22nd May, 1844, a little more than a month after the occurrence, and two days after repeated his confession to the magistrate. On *both* occasions he declared the prisoner was one of the gang engaged in the crime. Bhoobun Daloe confessed only in the mofussil, his confession being dated four days after Pershad's confession to the magistrate and he too denounced the prisoner like the other.

The prisoner's defence is nothing to the point. He declares he knows nothing of the 2nd and 3rd approvers; and that he had a quarrel with the 1st approver, whom as a bad character

he forbade to come to his village to visit there a loose woman of the name of Loochnee. The village was Anundpoor, and prisoner says he was the *surburakar* of it; but he is not able to prove one word of all this, which might easily have been done, if true. He has cited witnesses to speak to his character only, and they can only say he was a resident cultivator.

In April 1838, the prisoner was arrested on suspicion for dacoity and released again by the police for want of legal proof of complicity. In May of the same year, he was up before the authorities as a bad character, but the result of the enquiry is unknown. In 1844, he was again arrested for dacoity and again released for want of legal proof of complicity. In 1852, again for the 3rd time, he was seized and released on the same charge. One Goburdun had confessed to a dacoity in the Bhammara thannah and compromised him, but direct evidence was not procurable, as in the first two instances.

It is in my opinion sufficiently proved that the prisoner has belonged to a gang of dacoits; and I recommend that he be sentenced to imprisonment for life with hard labor in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) In this case, we find the evidence of the witnesses (approvers) as to the complicity of the prisoner in the dacoities, counts 1 and 2 of the calendar, fully corroborated by the circumstances on the record, and by those stated in the confessions of the parties apprehended at the time at which the robberies were committed; (viz. in 1838 and 1844.) Those parties, with others, were convicted. We therefore convict the prisoner on counts 1, 2 and 4, and sentence him to transportation for life.

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Case of  
HAROO  
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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

SHEIKH AHMED ALEE

*versus*

DEELA GWALLAH (No. 1,) AND BOODHUN GWALLAH (No. 2.)

Behar.

1857. **CRIME CHARGED.**—1st count, burglary and theft of property valued at Rs. 13-9; 2nd count, beating and wounding Sheikh Barhoo witness, against No. 1, Deela Gwallah, defendant.

February 20. **CRIME ESTABLISHED.**—No. 1, the same as crime charged; No. 2, 1st count of crime charged.

Case of DEELA GWALLA and others. **Committing Officer.**—Mr. J. P. Worsley, deputy magistrate of Nowada with magistrate's powers.

Appeal rejected; the pleas in appeal not shewing sufficient ground to reject the evidence for the prosecution. **Tried before Mr. T. Sandys, sessions judge of Behar, on the 27th September, 1856.**

**Remarks by the sessions judge.**—On the night of 25th July last, a burglary was effected in the prosecutor's house, and articles, clothes, and metal vessels to the value of Rs. 13-9, were carried off. The prosecutor awoke, set up the alarm and pursued the thieves, in which he was joined by the witnesses.\*

- \* Wt. No. 1, Bhyroo chowkeedar.  
 " " 2, Wahid Alli.  
 " " 3, Sheikh Barhoo.  
 " " 4, Boodhoo Hujjam.

In turning down the lane at Bakun Malee's house, they came upon a body of thieves, who slewed fight, when Barhoo, witness No. 3, calling out that he

had recognised the two prisoners, Deela prisoner No. 1 struck him a blow on the head with his *lattee*. Barhoo's head shewed the marks of a rather severe blow. With this occurrence the thieves were allowed to escape, but not until the two prisoners had thus been recognised by all the witnesses, although the other thieves appear to have escaped recognition.

The prisoners plead *not guilty* and set up a most frivolous defence, alleging spite by the prosecutor out of old grudges about the purchase of milk, so long as ten years ago, and that both as chowkeedars had taken the prosecutor and witnesses before the police as drunkards. The witnesses cited by the defendant, either before the magistrate or this court, are simply to character, for Deela prisoner No. 1, and to an *alibi* for Boodhun prisoner No. 2, having been at home on the night of the occurrence. The first is plainly stultified by Deela's recorded bad character and the second is of the weakest kind.

The jury\* unanimously convict the prisoners on the counts charged.

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\* Syed Gouhir Alli of Pahia, zillah Behar.  
Kunajeet Singh of Gundhur, do. do.  
Syed Ahmud Bux of Shahbazpore, zillah Behar.  
Shewoshunker Pandeli, do. do.

The prisoners are two brothers, and both have been chowkeedars of the

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quarter in the town of Behar, where the prosecutor resides. Deela is a recorded bad character since 1837, having undergone sentence four times, either for theft or as a notorious bad character. Boodhun had been changed from Behar to Gya as chowkeedar and was on leave of absence at the time of the occurrence. I find no reason to doubt the prosecution, and I accordingly convict the two prisoners on the 1st count on strong presumption, and Deela on the 2nd on full proof, and sentence them alike, Deela for his previous bad character and Boodhun as a chowkeedar on leave at the time of the occurrence.

*Sentence passed by the lower court.*—To be imprisoned for seven years each with labor and irons in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The grounds of appeal in this case are, 1st, the improbability of the statements made by the prosecutor and his witnesses as regards the recognition of the robbers; 2ndly, their inability to apprehend any of them though they were close to the robbers, and might have got assistance from the neighbours and peadahs of the moonsiff's cutcherry in the vicinity; and 3rdly, that had recognition then taken place, the prosecutor and witnesses would have gone at once to the thannah, and given information; lastly, the contradictions apparent in the evidence of the witnesses.

We have perused the record, and find the evidence consistent and clear, except in the statement of Bhyroo chowkeedar; and the contradiction apparent in his depositions as to the exact moment of the other parties coming up and seeing the blow, do not sufficiently weigh against the main facts of the case proved in the evidence of the other witnesses. We see no sufficient reason for disbelieving the credibility of the evidence for the prosecution; and therefore reject the appeal.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Midnapore.

PUCHOO MALEE.

1857.

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Case of  
 PUCHOO  
 MALEE.

Prisoner convicted and sentenced under Act XXIV. 1843, on his voluntary confessions.

**CRIME CHARGED.**—1st count, dacoity on 22nd August, 1854, in the house of Madhub Janah, inhabitant of Bhekooteea, thannah Nema; 2nd count, dacoity on 8th January, 1853, in the house of Ramruton Aughusty, inhabitant of Chuck Hajnutpore, thannah Nema; 3rd count, dacoity on 11th February, 1853, in the houses of Onoop Ramchunder and Doondeeramchunder, inhabitants of Jullodarie, thannah Bamunarah; 4th count, having belonged to a gang of dacoits.

**Committing Officer.**—Captain C. H. Keighly, assistant general superintendent, assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 6th December, 1856.

**Remarks by the additional sessions judge.**—The prisoner confessed to the court below to having been concerned as a dacoit by profession in ten dacoities.\* Before me he repeats his

- \* No. 1, Bhekooteca.
- „ 2, Pergh. Jalamota.
- „ 3, Maitoona.
- „ 4, Chutree Bahodar.
- „ 5, Village closeto Kontai.
- „ 6, Dolmuri.
- „ 7, Durwa.
- „ 8, Sulampore.
- „ 9, Kasbunnee.
- „ 10, Kuranjei.

confessions, specifying the three dacoities entered in the calendar out of the ten previously mentioned, and adding his admission to the general charge.

The approver witness Dunnoo, swears to having committed two dacoities in company with the prisoner; and the approver Narayan Janah, ten dacoities, the

three named in the calendar being amongst them, Dunnoo confessed on 11th March, 1856, and implicated the prisoner in his confession to one dacoity. Narayn Janah confessed on the 18th, 22nd and 26th September, 1856, and named the prisoner in eleven dacoities, as an accomplice with him in them, and one of his gang.

We have proof that all the three dacoities, specified in the calendar really occurred. That at Bhekooteea was reported the next day; several persons were arrested; and some so arrested confessed. That at Chuck Hajratpore (which the prisoner styles Kasbunnee) was reported the day after it occurred; and for it too several persons were apprehended after an investigation on

the spot. That at Jallurdadhi, (styled by prisoner "some village in Pergunnah Jelamota at the house of Doondeeram Chung,") was also reported at the time and an enquiry made. It was reported as *an attempt* at dacoity only.

I recommend that the prisoner be sentenced for having belonged to a gang of dacoits, to imprisonment with hard labor for life in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has voluntarily and fully confessed to the charges in the calendar, before the committing officer and the sessions judge. We sentence him to transportation for life under Act XXIV. 1843.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

LUKHUN JANAH.

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Midnapore.

CRIME CHARGED.—1st count, dacoity, on the 12th April, 1845, in the house of Ramkisto Mahatee, son of Narayn Koyal, inhabitant of Komkie, thannah Nema; 2nd count, dacoity, on the 10th June, 1847, in the house of Shunkur Hajrah, master of Seebram Berah, inhabitant of Gopeenathpore, thannah Nema; 3rd count, dacoity, on the 22nd May, 1855, in the houses of Doondeeram Chunder, and Kirteenarain Chunder, inhabitants of Jolladurhee, thannah Bomunurah; 4th count, being by profession a Surdar dacoit and having belonged to gangs of dacoits under Surdar Juggoodey and others.

Committing Officer.—Mr. C. H. Keighly, assistant general superintendent, assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 5th December, 1856.

*Remarks by the additional sessions judge.*—The prisoner was arrested on being denounced by Dunnoo Bhooeeya in his confession to the Shunkur Hajrah dacoity recorded on the 8th March, 1856; and the truth of this confession has been to-day sworn to before me by the said Dunnoo Bhooeeya, who is a convicted dacoit.

The prisoner confessed to the joint-magistrate to having been concerned in eighteen dacoities, the three entered in the calendar being amongst them. He again admits he was a professional da-

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coit, and engaged in the dacoities specified in the calendar, and in fifteen others not specified, in this court.

That some of these dacoities really occurred is proved, first by the record of the Khurkee case in which suspected persons were arrested at the time and released for want of proof by the magistrate on the 30th May, 1845; secondly, by a report of the mahafiz of the foudary court, dated 26th April, 1855, declaring that he has ascertained from the court register certain persons were committed to and released at the sessions, charged with the Shunkur Hajrah dacoity in December, 1847; &c. &c.

The prisoner has been often before the authorities; he admits on ten or twelve occasions. There is proof of this with the record. He has been six times accused of and arrested for dacoity, and once at least imprisoned for want of security for being a bad character. I recommend that he be sentenced, for having belonged to a gang of dacoits, to imprisonment with hard labor for life in transportation.

But that the prisoner has also freely confessed before me, I would have enquired how it was he was not put on his defence for two and half months after his apprehension.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has fully and voluntarily confessed before the assistant dacoity commissioner, Captain Keighly, and the sessions judge, to having committed the dacoities, with which he is charged in the calendar, and others: in all eighteen dacoities; and to having belonged to a gang of dacoits. We therefore sentence him to transportation for life under Act XXIV. of 1843.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

NARAYN JANAH.

Midnapore.

1857.

February 21.

Case of  
NARAYN  
JANAH.

CRIME CHARGED.—1st count, having committed a dacoity, on the 26th January, 1852, in the house of Urjoon Mundul, brother of Toolsaram Mundul, inhabitant of Suffeabad, thannah Nermal; 2nd count, having committed a dacoity, on 8th January, 1853, in the house of Ramruttun Augusty, inhabitant of Chuck Hajrutupore, thannah Nermal; 3rd count, having committed a dacoity, on 11th February, 1853, in the house of Doondeeram Chunder, and Unoopram Chunder, inhabitants of Jul-ladharee, thannah Bamunarah; 4th count, being by profession a Surdar dacoit, and having belonged to gangs of dacoits under Surdars, Dummoo Bhooeeya and others (convicts.)

Prisoner convicted and sentenced under Act XXIV. 1843, on his voluntary confessions.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent, and joint-magistrate of Midnapore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 5th December, 1856.

*Remarks by the additional sessions judge.*—The prisoner, Narayn Janah, confessed to the joint-magistrate\* to having been concerned in seventeen dacoities, which he enumerated, and amongst them were the three for which he is now indicted.

Before me he repeats his confession, and adds he had been twice previously arrested (once for dacoity, and once for being reported a person of bad repute,) before being convicted of the dacoity, for which he is now undergoing imprisonment for a term of years. He was released on both the previous occasions for want of sufficient proof.

That some at\* least of the dacoities, admitted by the confes-

\* Viz. those in all the three counts, &c. sary really occurred as described, is amply demonstrated by the record as well as by the parole evidence of the three witnesses Nos. 3, 4 and 5, who also swear to the prisoner having been concerned with them in certain of the dacoities confessed to, in accordance with *their* previous confessions to them before the prisoner's arrest.

I recommend that the prisoner be sentenced for having belonged to a gang of dacoits, to imprisonment for life with hard labor in transportation.

\* He had made a previous confession while a convict in the Hooghly jail, and been in consequence sent over to the office here.

1857. *Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has voluntarily and fully confessed to the charges, both before Captain Keighly, the committing officer, and the sessions judge. We sentence him to be transported for life under Act XXIV. of 1843.

February 21.  
Case of  
NARAYN  
JANAH.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

versus

MUDDOO DUNDPAT (No. 3,) AND SADOO FUDEEL-KAR (No. 4.)

Midnapore.

1857. **CRIME CHARGED.**—1st count, Nos. 3 and 4, dacoity on the 4th March, 1848, in the house of Nutye Rodal, inhabitant of Kharoon, thannah Puddoobussan; 2nd count, dacoity on 31st March, 1849, in the house of Bishnath Sawunt, inhabitant of Burampore, thannah Bhogusa; 3rd count, dacoity on 23rd July, 1849, in the house of Bindabun Shee, inhabitant of Autberriah, thannah Purtabpore; 4th count, dacoity, on 5th July, 1853, in the house of Rughoo Mundul inhabitant of Raj-hatty, thannah Purtabpore; 5th count, No. 3, burglary in the house of Muddoo Doss, inhabitant of Jote Obheeram, thannah Puddoobussan, on 24th March, 1855; 6th count, Nos. 3 and 4, having belonged to gangs of dacoits.

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Case of  
MUDDOO  
DUNDPAT.  
and another.

Prisoner convicted and sentenced under Act XXIV. of 1843, the testimony of the approver, witnesses, being corroborated by other independent evidence.

**Committing Officer.**—Captain C. H. Keighly, assistant general superintendent and joint-magistrate, Midnapore.

**Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 6th December, 1856.**

*Remarks by the additional sessions judge.*—Two of the dacoities charged in this calendar against the prisoners (counts 1 and 3,) cannot be considered. The prisoners were charged with “having belonged to a gang of dacoits” on evidence offered against them as to these two dacoities, and acquitted by the sessions judge on the 7th March, 1856. Nor can the prisoners be tried in this calendar on a charge of burglary (count 5;) as dacoity and burglary are not cognate offences; and with regard to the former, no law officer or jury is permitted to interfere, while in the latter one or the other is indispensable. There then remain against the prisoners the charges contained in counts 2, 4 and 6 only.

The dacoity at Berampore was committed on the night of the 31st March, 1849. The approver witness, Nobeen Mahitee, confessed to it at Midnapore on the 22nd September, 1856, and

in his confession denounced, amongst other accomplices, the two prisoners and the approver witness, Radhoo Mahitee. Radhoo Mahitee confessed to this dacoity on the 2nd September, 1856, denouncing in it both the prisoners and his fellow-witness Koochul Janah, but not the approvers, Mudhoo and Moocheeram. Mudhoo Pookooreah confessed to this dacoity on the 28th June, 1856, and denounced, as associated with him in the offence amongst others, both the prisoners and the Surdar of his fellow-witness's gangs, Soondar Kamar, but not the approvers themselves. Koochul Janah approver confessed to this dacoity on 28th November, 1855, and denounced, as his companions in it, twenty-four persons, amongst whom I find both the prisoners and two of the approver witnesses, Radhoo and Nobeen. All these witnesses have given their evidence before me in accordance with their previous statements with considerable accuracy. There is no secondary or circumstantial evidence offered on this charge in support of the four approvers' testimony. The prisoners, though nominally arrested on the 21st September, did not reach the dacoity office till the 23rd September, when they were on the same day called upon for their defence.

The dacoity at Rajhutti (or Tooba,) was perpetrated on the night of the 5th July, 1853. The approver witnesses, Mudhoo Lekha and Radhoo Mahitee, were both in it; both confessed to it on the 4th April, 1856, and 5th September, 1856, respectively; and both named in their confessions both the prisoners and each other.\* Their evidence before me is strictly coincident with what they stated in the first instance.

There is much to corroborate the direct evidence just detailed on this count. Three days after the event, Munsharam Doss was arrested on this charge on information furnished by Nitai Sawant ryot; confessed and implicated the prisoner Mudhoo, Dundput and the approver witness, Radhoo Mahitee. Soondar Kamar the leader of the gang, in which the prisoners served, it has been stated by all the witnesses examined to-day, was himself arrested on being named by a confessing accomplice; confessed immediately (9th July, 1853;) and named in his confession both the prisoners and the approver, Radhoo Mahitee. Mudhoo Sawant now undergoing perpetual imprisonment in transportation was arrested, and on the 9th July, 1853, he too named in a confession he made as his associates both the prisoners and the approver witness, Radhoo. One Chundee Panjab, the same on the same date as regards both the prisoners and Radhoo; while Munsharam Doss already spoken of repeated his confession to the magistrate on the 9th July, the day after his admissions at the thannah. Lastly, and especially both the

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\* The approver Radhoo, had himself been seized and had confessed at the time, naming in *that* confession also both the prisoners.



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prisoners now under trial were arrested within five days of the dacoity and confessed the offence; viz. on the 10th July, 1853; and denounced each other. This confession (which has not been attested) the prisoners do not deny having made. They merely say they were ill-used at the time of making it.

The prisoner Mudhoo Dundpat, pleads *not guilty*, and says he is on bad terms with Radhoo Mahitee, the approver, for having denounced him once for a theft at the house of one Goluck Baug, the other approvers being his (Radhoo's) friends and doing what he tells them to do. He has not, however, called a single witness. The prisoner Sadhoo, also pleads *not guilty*. He also says Radhoo, approver, lived in his village one and half year, and that he (prisoner) got him turned out of it for being a rascal. He adds he knows nothing of the approvers. He has called no witnesses to prove his quarrel with Radhoo, approver; and of four witnesses he summoned in the lower court to speak to character he refused to have two examined. The two he has examined in both courts say he is a thief and rogue.

It is, in my opinion, amply proved the prisoners under trial were regular members of a gang of dacoits; and I recommend that each and both of them be sentenced to imprisonment with hard labor for life in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The zillah judge has convicted on the 2nd, 4th and 6th counts only, i. e. for the overt acts of dacoity in the house of Bishnath Sawant of Beerampore, and of Rughoo Mundul of Rajhatty, and for having belonged to a gang of dacoits.

The second count is proved by the evidence of four approvers whose confessions were taken, (with one exception) before prisoner's apprehension. This evidence agrees in details, and in regard to parties concerned; and it is certified by the committing officer, "while their (the witnesses') confessions were being taken, they were kept under a separate guard in a different part of my lines to where the approvers live; and every precaution was taken to prevent the possibility of collusion." It is also supported by the facts stated in the darogah's final report at the time, 2nd April, 1849. Vide Record No. 75.

In the fourth count the facts are as stated by the zillah judge in the 4th and 5th paragraphs of the letter above. The record No. 530 furnishes an account of detailed circumstances connected with the dacoity, such for instance as the junction of Haroo Jana's gang; the nature and disposal of the spoil, &c., corroborative of the general confessions of the approver witnesses.

We sentence the prisoners Madhoo, Dundpat and Sadhoo Fadeekar to be transported for life under Act XXIV. 1843.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND G. RAYNER, Esq., OFFICIATING  
EXECUTIVE OFFICER, CUTTACK DIVISION,

*versus*

PURMANUND MAHANTEE.

Cuttack.

1857.

CRIME CHARGED.—Forgery, in having without the knowledge of the executive officer falsified or changed the figures of the detailed items of expenditure in the monthly statement, marked A, and weekly statements, marked B and C submitted by the Section 6th darogah of embankments, in order to make them correspond with each other and with the day-book, on the 28th February, 1856.

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Case of  
PURMANUND  
MAHANTEE.

Committing Officer.—Mr. R. N. Shore, magistrate of Cuttack.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 8th December, 1856.

Prisoner acquitted, no fraudulent intent being proved. Remarks on Circular Order Vol. 1, No. 57, on alteration of Government accounts; and on Circular Order Vol. 3, No. 149 as to prisoner being in jail or on bail.

*Remarks by the sessions judge.*—The particulars of the case are as follows:—

It is proved that the accounts were received from the darogah by the prisoner, and that it was his especial duty to compare and check the returns of the darogahs and to bring any discrepancies to the notice of his superior. Instead of doing so, he altered or caused to be altered the weekly and monthly accounts, with a view to conceal certain discrepancies between them and the day-book.

Mr. Rayner, deposes to the prisoner having freely confessed to having made these alterations and his intent must be held to be fraudulent, and the insignificance of the sums, amounting to a few annas, are no excuse, for if such cooking of the accounts were not noticed, serious defalcations of the darogahs might be hereafter concealed by the amlah of Mr. Rayner's office. It was the peculiar duty of the prisoner to bring such errors or erasures to the notice of Mr. Rayner, no one saw the prisoner himself alter the accounts, but it is clear that they were under the prisoner's charge, and that the alterations are in the writing of the prisoner and that the ink in which they were made is not at all like that used by the darogah. I put perfect confidence in Mr. Rayner's evidence, which proves that the defendant freely and voluntarily confessed the commission of the offence.

The law officer finds him guilty, and as by Circular Order No. 57, of vol. 1, such alteration of accounts in a Government office is held to be forgery, I must sentence him to three years'

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PURMANUND  
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imprisonment with labor, but though I cannot pass a milder sentence, I beg leave to forward the case to the Sudder Court, under Section 9, Clause 3, of Regulation XVII. of 1817, with a request that the Court will remit two years of the sentence, as the prisoner may not have been aware that the crime was so serious as the sum of the altered items was so small.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner is convicted by the sessions judge of forgery, in having made certain alterations in the Government-Embankment accounts under his charge; but it is admitted by the prosecutor before the sessions judge, that he believes the prisoner did not make the alterations with a fraudulent intent, and that they are not productive of any injury to Government. From a perusal of the record, and the accounts submitted, we find that the prisoner admitted to the head-writer of the office that he had made the alterations in the accounts, because the latter did not tally with the office day-book. The prisoner was wrong in making any alterations of his own authority. He should have reported the discrepancies to his superior, and delayed making any alteration till he had obtained the order of the head of the office; but it is evident from the obvious character of the alterations themselves, exhibiting no attempt at obliteration or concealment, but quite the reverse, that the prisoner neither wished to deceive, nor had intention of injuring the Government. Had such been his object he would have either washed out, or carefully erased the darogah's figures; and made the alteration in ink, similar to that used for writing the accounts; but instead of this the alterations made bear rather the character of open and unconcealed clerical corrections of accounts, and are to the benefit, if any thing, of Government. The alterations are of two kinds; the first, in which the items were incorrect, and were corrected by the prisoner to make them tally with the office day-book, a document not produced at the trial, though apparently very necessary; and the second, in which the items in detail were correct, and the darogah's total was wrong; but which total, the prisoner, having properly added up the items, corrected. The statement made by the head-writer of the office to the magistrate, that finding the accounts of the Section 6 darogah correct, for once, he suspected some trickery, and was led the next day to examine the accounts, and then detected the alterations, seems made, either with the intention of gaining credit to himself or of enhancing the prisoner's offence; for the alterations in the monthly and weekly accounts are so self-evident, as at once to attract the attention of any one into whose hands they might pass; and they bear every mark of routine corrections rather than fraudulent alterations. As no fraudulent intention is apparent, nor indeed attributed to have existed in this particular

case, nor any injury resulted to Government, or to any other party by his acts, we consider the sentence proposed by the sessions judge in addition to the punishment of dismissal from office, and fine, imposed on the prisoner by his immediate superiors, improper; and therefore direct the immediate release of the prisoner.

The sessions judge has, with reference to Circular Order of Nizamut Adawlut No. 57, of volume 1, convicted the prisoner of forgery for making alterations in the records of a Government office. With the above Circular, proclamations in the native languages were issued, declaring that alterations in the Government records by any of the amlah, whether by the authority of the superior amlah, or of the magistrate, were illegal, and would be considered as forgery; but the sessions judge's attention is called to the terms of that proclamation, which set forth that if any of the amlah *deceitfully and fraudulently and with the view of doing injury*, shall forge or alter any of the Government records, &c.

The judge has not, as required by Circular Order 147, of volume 3, stated in his letter of reference whether the prisoner is in jail or on bail.

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Case of  
PURMANUND  
MAHANTER.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Beerbhoom.

1857.

GOVERNMENT AND ZUHOORUN MOOSELMANEE

February 24.

*versus*

AMANUT ALIAS AMNOO KHAN.

Case of  
AMANUT  
alias AMNOO  
KHAN.

CRIME CHARGED.—Rape committed on the person of Mohurum Chokree, daughter of Zuhoorun Mooselmanee.

Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 10th December, 1856.

*Remarks by the sessions judge.*—The daughter of the prosecutrix, a child of about 9 or 10 years of age, was alone in her mother's house engaged in cooking, when the prisoner, who was, it seems, in the habit of coming to the house, came in, took her up in his arms, carried her to a *charpaie*, and stuffing her clothes

Prisoner convicted of rape on child of 9 or 10, on violent presumption, and with reference to Section 28, Act II. of 1855. Attention drawn to Section 15, Act II. of 1855. The penalty of irons not remitted.

into her mouth to prevent her cries, forcibly effected his purpose. The unfortunate child, after the deed was done, attempted to run off, but, it appears, fell senseless in the lane that goes

Witness No. 1.

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**KHAN.**

by the door of the hut. She was picked up and attended to by her grandmother, who happened to be passing that way. The

Witness No. 8.

old woman gave her evidence in so confused and inexplicit a manner, that it was difficult to elicit her meaning, but she spoke to the fact of finding the girl senseless, and bloody, and to her having said that the defendant had forced her. A little boy, the brother of the girl, said that he saw the defendant going from the place.

Witness No. 9.

Other witnesses prove that it was the common report that the girl had been violated by the prisoner, and that she was seen by them in a bloody condition, and it is shewn that she sustained such injuries that could have been caused by forcible carnal connection, and which the witnesses believed to have been so caused.

Witnesses Nos. 6 and 7.

Other evidence very clearly proves that the defendant made very strenuous efforts to hush up the case, even going so far as to offer marriage to the injured girl.

Witnesses Nos. 3, 16, 17, 18  
 and 19.

very strenuous efforts to hush up the case, even going so far as to offer marriage to the injured

It will be observed that there were two days' delay before the complaint was made, this arose from the absence of the mother.

The defendant denied the crime and pleaded *alibi*, and that the case had been brought up against him out of spite on account of a debt he was owed by the mother, and of a quarrel with the head of a rival "*dull*." He cited no less than thirteen witnesses, several of them, his own relations, they give him a good character and speak to the other points of his defence, but it does not appear to be sufficient to clear the man.

The proof is certainly meagre, but had it been a got-up case, as defendant endeavours to shew, the parties would assuredly have brought forward apparently stronger evidence.

The jury, with whom I tried the case, have found the man guilty, in this, I concur, and therefore propose that he be sentenced to five years' imprisonment with labor, but without irons, being of a respectable family and condition in life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This case is both a referred and an appealed one. The evidence of the civil surgeon and of others leaves no doubt of a brutal rape having been committed on the person of the prosecutrix's daughter, Mohurrum Chokree, a child of about 9 or 10 years of age. Mohurrum Chokree herself gives a clear statement of the perpetration of the crime by the prisoner; and her younger brother relates the state in which his sister was immediately after, clearly indicative of her having been raped; he adds that she at once stated that she had been raped by the prisoner; and that he saw the prisoner going away

from the house. These two, however, (prosecutrix's daughter and her son) stated (in reply to the single abstract question put to them on the point) that they did not understand the nature of an oath, or the obligation to speak the truth. And the magistrate seems not to have taken any steps to cause them to be instructed on these points before they deposed at the sessions, although there was sufficient interval; nor to have done more than put the abstract question above referred to. The Court direct attention to Section 15, Act II. of 1855. As it is, we are compelled to disregard the statement of these two witnesses altogether, as if they had never been made, although they tally most particularly and consistently with all the other evidence, and with the general circumstances of the case.

The evidence of Rawah, the child's grandmother, is to the effect that the prisoner is a connection of the family of prosecutrix: that their houses adjoin; and that prisoner had access to the house; that on the day of the occurrence and very shortly after it, she (witness) found the child raped, and weak, and her clothes bloody; and the prisoner lying on a cot in the prosecutrix's house. At the police, this witness said that prisoner confessed to her to his having committed the crime, and stated to her that she (witness) had no help for it. At the magistrate's and sessions courts she merely says that prisoner raised himself up from the cot, and went off.

The child's mother was away at another village, and did not come back till the 3rd day, when information was given to the police. There is evidence that the prisoner and his relatives tried to hush up the matter by offers of money and marriage. The prisoner's defence and appeal rest on the following pleas: 1, *alibi*; 2, delay in giving information at the police; 3, bad character of the prosecutrix, the mother; and of the child, her daughter, Mohurram Chokree; and the puberty of the latter; 4, enmity of the prosecutrix; and of the witnesses who depose to the endeavour to hush up the matter. The first plea is not sufficiently proved. The place at which prisoner says he was gambling from 9 A. M. to 5 P. M. incessantly and without moving from it, was only three beegahs from the place of the occurrence, and the evidence to the *alibi* is by no means sufficient as to exact date, and the continuous presence of the witnesses themselves on the spot. On the second plea it is sufficient to observe that the mother was the proper person to be the prosecutrix at the police, and did not arrive till the 3rd day. There is no evidence whatever in support of the third plea. And the evidence as to the fourth, amounts to this, that the prosecutrix was generally rumoured to be in debt to the prisoner, and that there existed a rival party in the village to that of prisoner and his brother, and that some of the witnesses who depose to the attempt to compromise, belonged to it.

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AMANUT  
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KHAN.

It is of course very difficult in a case of this nature to have the direct evidence of eye-witnesses, and consequently circumstantial evidence must be relied on to some extent. But in this case one difficulty is entirely removed, i. e. as to the fact of a brutal rape on a child of 9 or 10, with undoubted proofs of forcible connection. There remains the question of prisoner being the party guilty of that rape. The evidence of Rawah is to our mind trustworthy in respect to this, and is so supported by the circumstances set forth by the rest of the general evidence that we think we are justified in convicting the prisoner on it, with special reference to Section 28, Act II. of 1855. We do not think the fact of prisoner being of a respectable family and condition, is a ground for remitting the penalty of irons. The brutal character of the assault quite outweighs considerations of that nature; and referring to it, we do not "deem such exemption just and proper" under Clause 1, Section 3, Regulation II. of 1834. We accordingly sentence the prisoner to five years' imprisonment with labor and irons.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND BYJNATH SAHAI

*versus*

Bhaugulpore.

1857.

February 24.

Case of  
DOOLAR  
ROY and  
others.

DOOLAR ROY (No. 5,) JEEBUN SINGH (No. 6,) GOLAM HOSSEIN ALIAS HOSSEINEE (No. 7,) SUMMON (No. 8,) BIRBAL (No. 9,) CHUMROO (No. 10,) JUGGUT (No. 11,) DEANUT ALLEE DAROGAH (No. 12,) WAZ ALLEE MOHURRIR (No. 13,) AND MUHSAY ALLEE JEMADAR (No. 14.)

CRIME CHARGED.—Nos. 5 to 11, 1st count, dacoity with wounding in which property valued at Rs. 1,148-8-0, was plundered; 2nd count, knowingly receiving and having in their possession plundered property acquired by said dacoity. Nos. 12 to 14, 1st count, being accessories after the fact in the above dacoity; 2nd count, privity to the same; 3rd count, concealment of crime in not reporting the same; 4th count, gross neglect of duty.

CRIME ESTABLISHED.—Prisoners Nos. 5 to 11, knowingly receiving and having in their possession plundered property acquired by dacoity. Prisoners Nos. 12, 13 and 14; 3rd count, concealment of crime in not reporting a dacoity with wounding, in which property valued at Rs. 1,148-8-0, was plundered, and 4th count, gross neglect of duty.

Concealment and neglect of duty of police not punishable under precedents cited. Other prisoners convicted with reference to the manner in which prosecutor's property was found with them.

Committing Officer.—Lord H. U. Browne, officiating magistrate of Monghyr.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 28th October, 1856.

*Remarks by the officiating sessions judge.*—The prisoners pleaded *not guilty*.

From the prosecutor's deposition it appears that on the 7th Chytle last, about twenty-five or thirty armed dacoits came with lighted *mussals* and first struck his dependent, witness No. 16, with a club who was seated by a fire warming himself. Amongst the dacoits, one of them inflicted a sword-wound on the right elbow of witness No. 2, (absent) another of prosecutor's servants, and another individual, witness No. 17, was also hit with a club, and bound by them. The prosecutor who was sleeping inside, hearing the noise, and perceiving that the house was attacked took refuge with the inmates, in the enclosure of a neighbour's dwelling. The dacoits entered the premises, and plundered property to the value of Rs. 1,148-8-0. After they had decamped, prosecutor returned, and found that his house had been rifled, and saw that the boxes and *petaraks* were broken and his servants wounded. In the morning, prosecutor directed Jectun and Dahoo Chowkeedar witness Nos. 17 and 19, to report the dacoity at *Teghra* thannah which was only one *coss* from his house. They went, and prosecutor told them to inform the darogah Deanut Allee, that on his coming to his village he would file a list of the missing property. On their arrival at the thannah they reported the occurrence, when the darogah ordered the mohurrir (the jemadar being present at the time) to take the deposition of the former, and the defence of the latter, to ascertain whether he was on duty or absent when the dacoity took place, I here remark that both the informants are illiterate persons, and were quite at the mercy of the police, for a faithful report to the magistrate of what they represented. After the deposition was written they enquired of the police what was the order, they were directed to go away. These men returned, and told prosecutor what had occurred. The prosecutor thinking that some police-men would come that day, did not even dress the wounds of his servants, after waiting for three days, a burkundaz witness No. 18, attached to the Barh jurisdiction arrived at his house, from him he heard that some dacoits had been apprehended with suspicious property in his possession, and that he was to go and recognize it. Prosecutor (who is a respectable young man, has recently succeeded to the ancestral property, and evidently unacquainted with the routine of criminal proceedings) suggested to his connection, witness No. 20, that he should go to the *Teghra* thannah and report the burkundaz's arrival, and the cause of his coming. After some discussion on this point, they both agreed to go to the

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Case of  
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thannah, they went on an elephant, and on their arrival told the darogah Deanut Allee, first grade, prisoner No. 12, mohurrih No. 13, how the dacoits had been captured at Barh. The darogah became displeased with prosecutor, and told him, that he had reported the case to the magistrate, and the investigation depended on the orders he received, making other frivolous excuses, and threatening him not to go to Barh. After this, prosecutor returned home, and the burkundaz (who had been deputed by Mr. deputy magistrate Vincent to ascertain whether a dacoity had occurred in the Monghyr jurisdiction) returned, and informed him what had transpired. As the prisoners had been apprehended with a quantity of suspicious property on their persons, and finding that the prosecutor was deterred by the police from attending his court, Mr. Vincent wrote to the officiating magistrate of Monghyr, who requested him to send the prisoners and property to his office which was done, and another first grade darogah Lall Mahomed, was deputed to enquire into the case. It was then ascertained, that a dacoity had occurred, and property as specified in the list filed by prosecutor had been plundered. On his appearing before the magistrate, he identified several articles amongst the property, with which the prisoners were apprehended, they are produced in court, and recognized by witnesses Nos. 12, 13, 14 and 15, as belonging to the prosecutor.

Witnesses Nos. 3, 4, 5 and 6, to the apprehension and finding of property on the prisoners, depose, that they had received instructions from the thannah to be in the alert, as many dacoities had occurred in the surrounding districts, and should any suspicious-looking persons with property pass through the villages, they were to report the circumstance to the police. The prisoners Nos. 5, 6, 8, 10 and 11, alighted at a well in a village called Bustee Goriarpore, and commenced to refresh themselves, when witness No. 4, Chowkeedar approached, and interrogated them, but on their giving somewhat evasive replies, he suspected them, and while on his way to inform the burkundaz, No. 3 witness, who was in the village, he met him. On their approaching, and the prisoners seeing the police, they commenced to run off, and from prisoner No. 6, property No. 15, fell on the ground; by the aid of the villagers they were captured, and when taken to the phandee, they were searched, and a quantity of suspicious property, such as silks, silver ornaments, &c., quite beyond their respectability, was found on their persons, and in their bundles. While the witnesses were taking prisoners Nos. 5, 6, 8, 10 and 11, to the Barh thannah, on arriving at a *nullah* they saw prisoners Nos. 7 and 9, a Hindu and Mussulman together, the former sleeping, and the latter seated near him, with a bundle by his side, they were suspected, and while witness No. 3, with others were approaching, prisoner

No. 7 awoke, and on seeing the police, and being a known bad character, he attempted to abscond, but both of them were taken into custody and amongst the suspicious property found in the bundle, prosecutor identifies Nos. 26, 27 and 30, they, with the other prisoners were taken to Barh, and eventually sent to the officiating magistrate of Monghyr and committed for trial with the other prisoners.

The informants witnesses Nos. 17 and 19 declare, that they reported the dacoity to the darogah just as it had occurred, and positively deny having deposed as represented by the police and reported to the magistrate "that merely a theft had taken place, and only two '*kullumdans*' had been stolen and found broken at a little distance from the house, they were not aware who had committed the crime, they did not suspect any one, and therefore there was no need of an enquiry." Two shopkeepers were called and attested their depositions, prisoners Nos. 12, 13 and 14 were present on the occasion. Witness No. 17, Jeetun states, that the oath was not administered to him, nor was his statement read over to him in the presence of the subscribing witnesses, though it would appear, that the deposition was taken in due form and the oath administered by the mohurrir, contrary to Nizamut Adawlut's report, volume I, page 386, the darogah being present at the time. I place full reliance in the testimony of these witnesses, they could have no object in concealing the crime, especially as one is the chowkeedar of the village, he must have been aware that sooner or later, the crime would be reported to the police, and his misconduct brought to the notice of the magistrate, especially, as the dacoity occurred only one *coss* from the thannah, and the police could not fail to be acquainted with the circumstances. A grosser case of concealment and misrepresentation of crime, and neglect of duty can scarcely be on record, vide Clause 6, Section 8, Regulation XX. of 1817, though the prisoners Nos. 12, 13 and 14 plead in their defence, that there is no motive apparent for concealment, particularly when it is considered, that they have performed their duty to the satisfaction of Government for the period of 9 to 20 years, and have received rewards, and testimonials of good character, &c., these prisoners attempt to throw discredit on the prosecutor's deposition by enquiring, why he did not, being a landed-proprietor, report the dacoity to the magistrate as required by law and not allow thirteen days to elapse from the information lodged by himself at the thannah to the date of arrival of Lall Mahomed darogah? This question is answered by the fact, that the police prevented the prosecutor from going to Barh, and being at their mercy, feared the consequences which might arise, as he had already been threatened, knowing what power the police have, when not under the immediate control of the magistrate, besides, he was a young

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man, and had recently succeeded to the estate, and was ignorant of the requirements of the law. They again allude to the discrepancy in the evidence of the witnesses. Before this court they all gave their testimony in a most independent, and straightforward manner, indicating that they were speaking the truth, the only witness who faltered in his evidence was No. 20, he was very ill, so much so, that he had to be almost carried into court, some allowance must therefore be made for the slight discrepancy apparent, which was rectified by himself, on my bringing to his notice, what he had stated before the magistrate. I attach little importance to the deviation apparent on this witness's statement, as it does not affect the facts of the case which are established by the evidence of other witnesses for the prosecution. The jemadar attempts to prove an *alibi*, but has signally failed, the prisoners' witnesses depose to their presence at the thanuah, when informant, and the chowkeedar, came to report the dacoity, the responsibility of concealment and misrepresentation of crime, and their motive devolve on themselves which has been clearly established; they have been convicted on counts 3 and 4 and sentenced accordingly. This case appears to be identical with that printed in the Nizamut Adawlut's reports for 1853, vol. III. part II. page 849.

As regards the prisoners from Nos. 5 to 10, they were apprehended with plundered property in their possession obtained by dacoity, which is identified by the prosecutor, and his witnesses, they severally plead ignorance of its belonging to them, and their witnesses can depose to nothing in their behalf, I therefore convict them on the 2nd count as none of them were recognized when the dacoity was perpetrated.

Both the officiating magistrate Lord Ullick Browne and Mr. deputy magistrate Vincent deserve great credit for the tact they have displayed in bringing this case to such a satisfactory termination, and I trust their exertions will meet with the Court's approbation. I have recommended, that the two burkundazes Nos. 3 and 18 and witness No. 4 chowkeedar should be rewarded for their meritorious conduct in apprehending the prisoners with the plundered property in their possession.

*Sentence passed by the lower court.*—Nos. 5 to 11 each to fourteen (14) years' imprisonment with labor and irons in banishment to another zillah, and under Act XVI. of 1850 jointly and severally to pay a fine of 1,093-8 as compensation for the loss sustained by Byjnath Sahoi, prosecutor. No. 12 for six months' imprisonment without labor and to pay a fine of 500 Rs. in default of payment to a further term of six months without labor and irons. No. 13, for six (6) months' imprisonment without labor and to pay a fine of three hundred rupees in default of payment to a further term of six (6) months without labor and irons. No. 14 to six months' imprisonment without

labor and to pay a fine of one hundred rupees in default of payment to a further term of six months without labor and irons.

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*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners Nos. 12, 13 and 14, the darogah, mohurri, and jemadar of thannah Teghra have been found guilty by the zillah judge of concealment and neglect. They urge on their appeal that the law, cited by the zillah judge, Clause 6, Section 8, Regulation XX. 1817, does not apply, and that the sentence of imprisonment and fines passed upon them is illegal, as ruled by this Court on the 26th July in the cases\* below of Moheshchunder, petitioner, and Sheikh Hossein Buksh, petitioner. We consider the objections valid, as the law, cited by the zillah judge, only refers to omissions of reports in diaries; and as concealment and neglect of duty are not punishable as criminal offences under the general laws of criminal justice of our courts. We therefore annul the sentence passed on the prisoners Nos. 12, 13 and 14.

Counsel for prisoners, Nos. 5 to 11, Murhummut Hosain. For prisoners, Nos. 12 to 14, Mr. Allan and Ameer Alea.

The prisoners, Nos. 5 to 11, appeal on the general merits of the case, especially urging that the first statements of the prosecutor's people were to the effect that there had only been an ordinary theft, and that no investigation was desired; that the fact of one of the principal witnesses furnishing prosecutor some days after, with a list of property, while prosecutor had up to that time, and for sixteen days, furnished none himself, shewed the case to be a made-up one; and that while there was no recognition at the time, and no report by the prosecutor himself, as zemindar, to the magistrate, when he found (as he stated) the police would not do their duty in his behalf; and while there was very weak and unsatisfactory evidence as to the manner of the apprehension of the prisoners, and as to the alleged discovery

\* Orders by Messrs. H. T. Raikes and J. S. Torrens, dated 26th July, 1856, in the case of Moheshchunder Mitter, petitioner.

The magistrate's order in this case, sentencing the darogah to six months' imprisonment for neglect of duty and collusion which has been upheld by the sessions judge is not warranted by law and is therefore reversed.

Sheikh Hossein Buksh jemadar, petitioner.

The magistrate has dismissed the petitioner, police jemadar, from employment and sentenced him to 6 months' imprisonment and 200 rupees fine commutable to six months more with fine in lieu of labor.

As the concealing a crime, which if it came to his knowledge and was not reported only amounts to a breach of duty, is not punishable with imprisonment, the orders passed by the magistrate and sessions judge awarding such must be reversed.

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of the prosecutor's property upon them, the doubts of their guilt must be so strong that a conviction could not be maintained. It was further urged that the conviction by the zillah judge was only on the second count, i. e. of knowingly receiving stolen property; and that therefore a sentence of fourteen years' imprisonment was altogether improper.

The occurrence took place about midnight on Friday, the 28th March. The police records shew that on Saturday, the 29th, Jeetun, witness No. 17, and Dhao Dhosad, witness No. 19, the one a servant of prosecutor, the other, a village chowkeedar, were sent to the thannah of *Teghra*, a *coss* off prosecutor's house, to give information.

The *Teghra* police record shews that they both stated the occurrence to be a theft of writing-boxes and papers; that all the property had been recovered; that they suspected no one; and desired no further enquiry.

*On the same day* about 5 or 6 P. M., the burkundaz, Mohesh, witness No. 3, stationed at the *pharee* of Chandwah, in the jurisdiction of Barh, at a distance of about 20 miles from prosecutor's house, apprehended prisoners Nos. 5, 6, 8, 10 and 11, near a well there. The evidence of this burkundaz is to the effect that having been ordered to be on the look-out for dacoits, as dacoity was rife, he was going his rounds, when he heard (how or whence is not stated) that some dacoits had crossed the river, and that he thereupon intimated the necessity of vigilance, to Karoo, witness No. 4, Kurrun, witness No. 5, and Gurbhoo, witness No. 7; (village policemen;) as also to Badil Singh, witness No. 6, and Munsha Singh, witness No. 8; (villagers;) with a view to apprehend the dacoits on their return; that intermediately he did nothing whatever as to communicating, or acting upon the knowledge he had thus acquired of the dacoits having crossed; that he heard from Karoo, No. 4, at Besneegirderpore that four or five armed men had just passed; that he next saw prisoners Nos. 5, 6, 8, 10 and 11 and another, (Munee) who escaped, at a well at Chandwah at about 5 P. M. on the 29th, and with the aid of the above five persons, apprehended prisoners Nos. 5, 6, 8, 10 and 11; that a small gold ornament, No. 15, since proved to be prosecutor's, then and there fell from the waist of prisoner No. 6; and other property, since proved to be prosecutor's, was found on each. The witness adds that next day the prisoners were being taken into, and reached Barh; and that when on the road to Barh with them he, witness, saw prisoner, No. 7, asleep, with prisoner, No. 9, sitting by him, on the banks of the river, and arrested them, because No. 7, who is a noted bad character, when he recognized the witness, on being awoke by the latter, hid his face; and that suspicious property (since proved to be prosecutor's) was found upon them also. Karoo, witness No. 4, states that he had orders from the preceding witness to look after dacoits, and

that he saw the prisoners Nos. 5, 6, 8, 10 and 11 at the well at Chandwah; that he enquired where they lived, and on their replying that it was no concern of his, he said that they were dacoits; told the burkundaz, Mohesh, witness No. 3, and with witnesses Nos. 5, 6, 7 and 8 arrested them. This witness and Nos. 5, 6, 7 and 8 depose to the apprehension of prisoners Nos. 5, 6, 8, 10 and 11 at the well, and to the property, since found to be prosecutor's, having been found on prisoners when taken from the well to the *pharee*, and searched there that evening. He also deposes to the apprehension of prisoners, Nos. 7 and 9 next day.

The prisoners from first to last have uniformly declared that the property, upon the finding of which, with them, the conviction rests, was not found upon them; and that they were each journeying with some specific object; and that their apprehension, and the alleged discovery of property were collusive acts of the Police, to make up a case.

On the arrival of the prisoners at Barh, on the Sunday 80th, the deputy magistrate gave orders for the discovery of the name of any party who had been robbed; and Uzawul burkundaz, witness No. 18, states that he was deputed by the deputy magistrate of Barh for this purpose: and went first to Dalsing Serai in the Tirhoot district; thence to Shunyaseepore, where he heard in the house of a zemindar, whose name he did not know, that prosecutor had been robbed by dacoits: that he, witness, thence went to prosecutor's house at Bhowna, a total distance of twelve *coss*, and arrived there on the Monday; that the prosecutor and his relative, Rughoo, witness No. 20, on being required by this witness to accompany him to Barh to see if the property found with the prisoners was his, declined, till he should have had the advice of the darogah of Teghra; that prosecutor and Rughoo accordingly went, (it being the 3rd day after the dacoity), on prosecutor's elephants to Teghra; but that the darogah, as this witness learnt from the prosecutor, told him not to go to Barh, as he (the *Teghra* darogah) had reported the case to the magistrate of Monghyr, *Teghra* being in that jurisdiction; and that witness himself did not go to *Teghra*, as he had only received orders to discover the party robbed. This witness adds that he saw a sword-blow on Lutchemun, witness No. 2's breast; and that he, witness, was to receive a reward after the sessions.

The evidence of Budul Singh, No. 6, is, that prisoners were apprehended by witnesses, Nos. 3, 4, 5, 7, 8 and himself; and that property since shewn to be prosecutor's was found on them; that this witness was also deputed by the deputy magistrate of Barh to try and discover who had been robbed; that he heard from a Mohunt at Doolapore, whose name he does not know, of a dacoity at prosecutor's, and that he and Azawul met at prosecutor's, and that he had taken with him a list of the

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property found on the prisoners, and given him to shew to the party robbed, should he be able to discover him.

The prosecutor states that he sent information by his servants of the dacoity next day, but that the darogah of *Teghra* did not attend to it; that three days after, when Uzawul Singh burkundaz of the Barh thannah came to his house, and informed him that the dacoits with the property had been apprehended, he went to the *Teghra* darogah, and wished to give a list of the property, but the darogah would not take it; that the darogah said he must await the orders of his master, the magistrate of Monghyr; that from the 3rd to the 16th day, he (prosecutor) made no report to the magistrate, nor to any one else, as he was awaiting the darogah's proceedings; and did not give a list of the property till the 16th day; that he recognised none of the dacoits; and that none of his people mentioned to him having done so.

The village chowkeodar, Dhao Dhosad, No. 19, says that there was a dacoity, and that Lutchmun witness No. 2, was wounded on the right arm; that he could not recognize the dacoits; and that he and Jeetun duly reported the dacoity, the day after its occurrence, but that the *Teghra* darogah did nothing.

Rughoo, witness No. 20, states that there was a dacoity, and that prosecutor and he, on the third day, when Uzawul, and Badil, witness No. 6, arrived at prosecutor's, went to the *Teghra* thannah. The deposition of this witness has many contradictions, and discrepancies, as to what occurred, and as to prosecutor's proceedings.

The villagers of the adjoining village of Bajectpore, stated before Lal Mahomed, darogah, that a dacoity did actually take place; but these witnesses have not been examined either by the magistrate or the sessions judge.

The evidence of the prosecutor and his servants to the recognition of the property is clear, and consistent.

The evidence for the prisoners is to the effect that they are of good character, and that such of them, as plead that they were going with money to purchase cattle, had been heard to mention this intention by the witnesses they respectively call.

We have prominently noticed all the weak and conflicting portions of the evidence for the prosecution, in order to give the prisoners the benefit of the doubts to which they may give rise. They are such as refer to the delay in prosecutor furnishing a list of his lost property, the evidence to the finding of the property being that of the burkundaz, and three subordinates, and of Badil Singh, (an interested party, deputed by the deputy magistrate and who was to receive a reward after the sessions,) and of Mansa Singh, who by his own statement was for some

portion of the period of the apprehension of the prisoners absent, from the others named as then present.

But *against* the prisoners there are these *strong* points; *firstly*, that the dacoity occurred at *midnight on Friday*, on one side the great river, and that the prisoners were apprehended with the property the *next day about ten coss* off on the other side, in another jurisdiction; that therefore it was hardly possible for the witnesses, who apprehended prisoners, to have obtained the property after the dacoity, and kept it, and foisted it upon the prisoners, or concerted to prove that it was found upon them; *secondly*, still the prisoners might be deemed innocent, if the property sworn by the prosecutor and his witnesses to be his, was it in any way *en not* to be his. But this, is *not* the case. The prisoners do not own to its being theirs, or any one else's, or to its being found with them, while they bring *no* evidence at all to refute that for the prosecution on these points; and that property is clearly and consistently shewn to have been prosecutor's.

These are such strong and preponderating facts that we think they should outweigh the consideration of doubt naturally in the first instance arising from the defects in other portions of the evidence before referred to, as weakening the case for the prosecution; and we deem them sufficient to warrant a conviction.

In regard to the measure of punishment, and the prisoners' objection to it, we consider it legal under Clause 3, Section 4, Regulation XII. of 1818, the dacoity having been attended with wounding (V. Clause 2, Section 2,) and there being the "peculiar circumstance" of the crime being shewn by the record to have become prevalent in the neighbourhood. (V. Clause 2. Section 3.) But we do not think in this case the order of restitution under Act XVI. of 1850, called for; as it is not proved that these prisoners were leaders or principals in the actual plundering in the dacoity.

We reject the appeal of prisoners Nos. 5, 6, 7, 8, 9, 10 and 11; with the above modification. The prisoners Nos. 12, 13 and 14, (the darogah, mohurrir and jemadar of thannah *Teghra*,) have been found guilty by the zillah judge of *concealment*, and *gross neglect*. Their counsel urges that the law, cited by the zillah judge; (Clause 6, Section 8, Regulation XX. of 1817,) does not apply; and that the sentence of imprisonment and fines, passed upon them is illegal, as ruled by this Court in the cases below.\* We consider the objections valid; as the law cited by the zillah judge refers to omissions of reports in diaries; and as concealment and gross neglect have been ruled not

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\* Mohesh Chunder Pal, petitioner, present : Messrs. Raikes and Patton.  
Shekh Husein Bux, petitioner, present : Messrs. Raikes and Torrens.



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to be punishable as criminal offences under the general laws of criminal justice of our Courts. We therefore annul the sentence passed on the prisoners Nos. 12, 13 and 14.

*Note by Mr. G. Loch, Officiating Judge.*—I would add in reference to the conduct of the *Teghra* police that it is stated that the darogah concealed the occurrence of the dacoity, and falsely reported that a theft had been committed, on which the property had been recovered, and the reason assigned by the magistrate for this misconduct is, that the darogah was either afraid of losing his good name, (he being a first class darogah,) should he fail to apprehend the dacoits, or was too lazy to make the enquiry. It appears to me to be more probable, (and it is not unusual,) that the prosecutor, in order to avoid the trouble and annoyance of an enquiry, and of a protracted attendance of himself and witnesses at the courts, reported, through his servant, that a theft had taken place, and wished for no enquiry: and though it speaks little for the activity of the darogah that a dacoity should occur within two miles of the thannah without his knowing, and reporting it to the magistrate, yet, with reference to the informations before him, he was legally right not to enquire into the case. And it is probable that nothing further would have transpired, had not the robbers been apprehended on the Barh jurisdiction, and had not the immediate steps taken by the deputy magistrate of Barh to find out the party who had been robbed, obliged the prosecutor to come forward and acknowledge the fact of the occurrence of the dacoity, and then to screen himself from punishment for concealing the robbery, in direct opposition to his duty as a landholder, he charged the darogah with sending in a false report of theft. If, as it is supposed, a dacoity affords profit to the police, it is an unlikely thing, that they, at two miles distance only, would have failed to take advantage of the occasion; while there was also the probability of some of the subordinate police officers hearing of it, and reporting it to the magistrate: the darogah too could not be sure that the prosecutor or one of the other zemindars might not report the occurrence of the robbery to the magistrate, and complain of the darogah's neglect of duty. Even supposing the darogah to have originally sent in a false report, it is scarcely credible that he should have taken no steps to correct his error, which he could have very easily done when the prosecutor and Rughoo, as they say, went to the thannah three days after the robbery, and offered the list of stolen property, and begged for enquiry, and informed him of the capture of the dacoits, with property, in the Barh jurisdiction. Had they done so, the darogah would surely have perceived that concealment was no longer possible, and, throwing the blame of the false report on the prosecutor, would doubtless have exerted himself to investigate into the dacoity. For these reasons I cannot but think that the con-

cealment of the dacoity originated with prosecutor, and that information of theft, and not of dacoity was originally made to the darogah, but that he exhibited great want of vigilance in not finding out, and reporting the occurrence to the magistrate.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

GOVERNMENT

*versus*

LALOO PRAMANICK.

Rajshahye.

CRIME CHARGED.—Accomplice in the riot attended with the murder of Babon Sirdar and the wounding of Shoobul Chowkeedar, Haradhun Mundul, Koobeer Sirdar and Tomeezooden Peadah and the resistance of collector's process.

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Committing Officer.—Mr. C. E. Chapman, officiating magistrate of Rajshahye.

Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye, on the 26th December, 1856.

Prisoner convicted on clear proof; and sentenced as proposed by the sessions judge.

*Remarks by the officiating sessions judge.*—The details of this case have been recorded at some length, on the trial of Aurrip Sircar and others in the month of June last, see Nizamut Adawlut Reports for the month of September, 1856. The prisoner who had not then been apprehended, is indicted as an accomplice in the serious riot of which those prisoners were convicted.

The charge appears to me well supported by the evidence; out of the witnesses who have been examined this day, *Chamaroo Pramanick* No. 2, *Beeshoo Pramanick* No. 3, *Shoobul Chowkeedar* No. 4, and *Haradhun Mundul* No. 5, testify to the prisoner having been one of the mob who committed the outrage, and *Pundit Pramanick*, No. 12, deposes that he saw him standing by when the deceased, Babon Sirdar, was lying *mori-bund*, in Aurrip's premises.

Witnesses, Nos. 4 and 5, indeed go further and say that the prisoner struck them with a *lattee*, but I am not inclined to attach confidence to this assertion; first, because in the former trial, I saw much reason to believe that *Shoobul Chowkeedar*, No. 4, exaggerated in his version of the matter, and secondly, because neither he nor *Haradhun* No. 5, on that occasion mentioned this prisoner's name, which they were not likely to have omitted if he had really inflicted the injuries now alleged, with

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a *lattee* especially as to Haradhun, whom he is said to have wounded on the head.

I think, however, from the evidence now recorded, coupled with the mention of his name in the former trial, that the charge of complicity is well established against the prisoner, especially as his plea of absence on board a lighter boat on the day of the riot, has completely broken down, his witnesses denying all knowledge of the matter, and disclaiming any connexion with him.

I may observe that the thannah papers indicate the prisoner as being one of those originally named. But the mutilated condition in which those papers have returned from the presidency, from their transmission in the rainy season, precludes a very close examination.

The law officer, however, considers the evidence unsatisfactory, and the case must therefore be referred for the orders of the Nizamut Adawlut.

In the event of the Superior Court concurring in the prisoner's conviction, I should recommend a similar sentence to that passed on the prisoners Moky and others, namely three years' imprisonment without irons and to pay a fine of 100 Rs. within a fortnight or in default of payment to labor, until the fine be paid or the term of his sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner was recognised as taking an active part in the riot and was named by the witnesses Chumaroo Chowkeedar No. 1, Chumaroo Pramanick, No. 2, and Beeshoo Pramanick, No. 3, before the magistrate, and identified by witnesses Nos. 2 and 3, before the sessions judge. We concur in the opinion of the prisoner's guilt expressed by the sessions judge; and sentence him, as recommended, to three years' imprisonment without irons from the date on which the sessions trial closed; and to pay a fine of Rs. 100, within a fortnight from the date of receiving intimation of this order, or in default of payment, to labor until the fine be paid, or the term of his sentence expire.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT, PROSECUTOR

*versus*

BHOLANATH (No. 21,) BEHAREE MATHOOR (No. 22,) AND JEETUN SINGH (No. 23.)

CRIME CHARGED.—No. 21, perjury, in having on the 31st July, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the sessions judge of Bhaugulpore, that “I saw Khosro Singh, lighting a fire; again on being cross-questioned, answered that Khosro Singh threw his hand towards the stack and ran away, but what he threw I have not seen.” And again said “that I saw fire in Khosro Singh’s hand and I saw him set fire” and on questioning him on this point, that you have mentioned above, that you have not seen fire in Khosro Singh’s hands, and now you say that I saw fire in his hand, and saw him set fire to the stack, I therefore call upon you to say, which of your statements is true; answered that setting fire to the stack is true, and not seeing fire in his hand is wrong. Such statements being contradictory on points material to the issue of the case. No. 22, perjury, in having on the 1st of August, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the sessions judge of Bhaugulpore. If the railway people were building the stack on the day of the occurrence, who were they? Answered, that I neither saw nor heard, and afterward said, that I saw the Sahib’s servants building the stack on the very day, but I do not know their names; again on questioning him on this point, that you at first said, that you neither saw nor heard of the stack being built, now you say, that all day long the Sahib’s servants were building the stack, what is the cause of this contradiction? Answered, that when the stack was building, I used to go to see it, this is right, and what I have said above that neither I saw nor heard of the stack building is wrong. Such statements being contradictory on points material to the issue of the case. No. 23, perjury, in having on the 1st August, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the sessions judge of Bhaugulpore, that there was a cottage two and half *russees* west of the burning stack, where the Sahib’s peadas were living, but I do not know their names, nor do I recognize them, and again said that I heard a noise; Poorun Singh, Lala Singh and Bholanath, were making a noise near the cottage; these three persons are the Sahib’s servants

Bhaugulpore.

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One prison-  
er convicted  
of perjury. A  
reference made  
to the sessions  
judge for an  
explanation as  
to the other  
two.\*

\* Subsequently acquitted.

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and were living in the cottage; on questioning him on this point that you have mentioned above, that the cottage was on the west side of the stack and that the Sahib's peadas were living in it, but I do not recognize them, and now you say that Poorun Singh and Lala Singh, the Sahib's servants, were living in that cottage, what is your answer to this contradiction? Answered, that I knew their names, this is true, but what I have stated above, that I did not know their names, is false. Such statements being contradictory on points material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. F. A. Vincent, deputy magistrate of Barh.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 17th October, 1856.

*Remarks by the officiating sessions judge.*—This case was tried at Monghyr on the 17th October, 1856

\* Fuzund Ally.

Sukawut Ally.

Obheynarain Singh.

with the aid of a jury.\*

The prisoners pleaded *not guilty*, they were committed for trial on a charge of perjury by order of this court, wherein they gave contradictory evidence on a point material to the issue of the case in the trial of Khosro Singh, prisoner, acquitted, vide case No. 1 for August 1856, in which the details will be found. The sheristadar of the sessions court wrote the depositions, and the moonshee, witness No. 3, administered the oath; the prisoners in the presence of witnesses Nos. 1 and 2 admitted that they had made the statement, who attested them.

The prisoners plead nothing more than a denial of having committed perjury, which does not exonerate them. The jury return a verdict of guilty, in which I concur, and sentenced them as below.

*Sentence passed by the lower court.*—Each to three years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) In regard to the prisoner, Bholanath, the perjury, on a point material to the issue of the case, is obvious and palpable. In regard to the other prisoners, the Court do not find in the No. 6 statement why the sessions judge considers the perjury to have been on a point material to the issue of the case; and no reason is obvious. They therefore confirm the sentence only as to the prisoner Bholanath. But they require the sessions judge to state why he considered the perjury of the prisoners, Beharee and Jeetun, to be on a point material to the issue of the case; and to specify what portion of the original record of the case of Khosro Singh, (not before this Court) supports his view; and to forward that record.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

SHUDU SHEIKH.

Jessore.

1857.

CRIME CHARGED.—1st count, wounding Korbani Chokri, witness No. 1, with intent to murder her on the night of the 8th of February, 1856, corresponding with 27th of Magh, 1262; 2nd count, severely wounding Korbani Chokri, witness No. 1.

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SHUDU  
SHEIKH.

CRIME ESTABLISHED.—Wounding Korbani Chokri, witness No. 1, with intent to murder her.

Appeal re-  
jected. The  
sessions judge  
should have  
referred the  
case under  
Section 6, Act  
XXXI. 1841.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 17th July, 1856.

*Remarks by the officiating sessions judge.*—The sufferer Korbani Chokri, witness No. 1, a girl of about 11 years of age and wife of the prisoner, was with him alone on the night of the 8th February last, corresponding with the 27th Magh, when at midnight, as she states, he began talking to her and she refused to answer. He then struck her, when she cried, on which he was further enraged and seizing hold of a *dao* in the room, he cut her with it most unmercifully inflicting several (the medical testimony says thirteen) wounds on the back of her head, her neck, arm, and hands. The wounds were of a very severe nature, so much so, that when the witness was brought to the hospital, Dr. Palmer, the civil assistant surgeon, feared her recovery was hopeless.

After the assault, the prisoner made good his escape and was not seen or heard of till the 19th May last, nearly four months after the occurrence, when he surrendered himself to the nazir of the court of the assistant magistrate of Magoorah. Within the same compound, as the prisoner's house, the witnesses Nos. 2, 3 and 4 reside. The former is his brother-in-law and witness No. 3 his sister. They heard Korbani Chokri crying at first, and witness No. 3 went to ask what was the matter, but her brother the prisoner at once desired her to go about her business. The shrieks of Korbani and her calls for aid and water again attracting the attention of witness No. 3, she went again to her and found her lying weltering in blood, and in the mangled state deposed to in the medical testimony. The wit-

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nesses Nos. 2, 4, 5, 6, 7 and 8 successively came to the house on being called, and all saw the pitiable state Korbani was lying in. They all heard her express the same account of how her husband had wounded her. The witness No. 3 on finding the *dao* lying on the floor threw it into the jungle close by, fearing the prisoner's return and his again making use of it. It was found by the police, stained with blood and is before the court. It is the property of witness No. 4 and was taken from his house by Korbani Chokri the evening previous to the occurrence, as her husband desired her to bring it to cut some betel-nut.

The witness No. 1, Korbani, mentions she had had a little dispute with her husband, the prisoner, before going to sleep that evening, as he was angry with her for not having the lamp alight on his return home, and she had answered that it was not her fault, as there was not any oil for it.

After much hesitation, naturally arising from female delicacy to speak on such a subject, this witness Korbani mentioned, her husband the prisoner had at midnight asked to let him have connection with her, which she refused, partly, she adds, from resentment at his having before causelessly abused her, and more because sexual intercourse occasioned her much pain. The court was induced to put the question as witness No. 2, the prisoner's brother-in-law, stated it was his belief the prisoner was incensed because his wife was yet too young to allow him to have intercourse with her.

It is an abominable, cruel, heartless custom among the lower classes in this part of the country, to allow girls betrothed to go to their husbands, though of too young an age, to cohabit with them. It occasions endless misery and necessarily often brings on premature death to the wife, whose parents regardless of consequences seem to think their duty is discharged, when making over, be her age however tender, to the husband on demand, their betrothed daughter.

The evidence of Dr. Palmer fully explains the severe nature of the wounds inflicted, through this officer's unceasing care and great skill Korbani Chokri has been restored to health and is now out of danger, but she has lost the entire use of one arm, has some fingers cut off and several gashes on her neck never likely to be effaced.

The prisoner, on surrendering himself, answered to the charge before the assistant magistrate of Magoorah with the pleas of not guilty and that his firm belief was that his wife, witness No. 1, had been wounded by witness No. 4, after having criminal intercourse with her. As he had not, however, he states, any witnesses to prove it, that therefore he had absconded being afraid the crime would be imputed to him. The prisoner some few days after his arrival in the sudder jail, assumed the appear-

ance and ways of an insane. He was then put into the jail hospital, and has ever since been closely watched by the civil assistant surgeon and his subordinates, who now pronounce their unanimous opinion that the prisoner is feigning madness, having been put up to it by another prisoner in the jail, who advised him that it was his only hope to escape punishment.

The court summoned and examined witnesses Nos. 14, 15 and 16, not named in the magistrate's calendar, as the civil assistant surgeon mentioned their names and suggested their evidence would add weight to his own, inasmuch as they were constantly with the prisoner and had constant opportunities of watching him at all times. The witness No. 14 distinctly states the prisoner admitted to him that a prisoner who is named, told him to assume the appearance of an insane, to avoid punishment. On the charge being read to the prisoner he pleaded not guilty at once to the first count. On the 2nd count being read, he then commenced assuming inability to understand and more or less continued with his artifice until the evidence of Dr. Palmer and witnesses Nos. 14, 15 and 16, were taken down and explained, to him when, probably perceiving further obstinacy or artifice was useless, he became composed and on being called to give his defence, stated he was not guilty of any crime but had not any defence to put forward. The attempted plea of insanity hopelessly failed, as the prisoner at last shewed evident signs it was nothing but artifice assumed so long as he supposed the court and jury might be imposed upon by it. All the witnesses to the prosecution, many of them near relatives to the prisoner and all more or less acquainted with him for some years, state they never knew the prisoner evince any signs of insanity or mental derangement, and that he never was addicted to the use of intoxicating or deleterious drugs or drink.

The trial was conducted with the aid of a jury, under the provisions of Regulation VI. 1832, who find a verdict of guilty on the 1st count.

I fully concur in the justice of this verdict, and considering the diabolically cruel nature of the crime and the absence of any provocation in any way to palliate it, I feel it my duty to award to the prisoner the full extent of punishment the Regulations empower me to adjudge. The prisoner is accordingly sentenced to imprisonment with hard labor in irons for (14) fourteen years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley). The prisoner appeals to this Court, mainly on the ground that his wife was a bad character, and used to intrigue with Sectul Sheikh, witness No. 4, and that he had wounded her on finding this to be the case, but had no intention to kill her, and that proof of this intent was wanting. In the sessions, prisoner had urged that Sectul had wounded

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1857. the prisoner's wife, in order that he (prisoner) might get into trouble.

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The evidence for the prosecution clearly shews that either on account of the lamp not being lit, or more probably on account of prisoner's wife, a girl of 11 years and a half, refusing to have connection with him, prisoner attacked her with a *dhao*, inflicting "a great number of very severe incised wounds on the head, the side of the neck, and the upper portion of the right extremity," those on the head and neck "imminently endangering life." The evidence of the civil surgeon and the two native doctors clearly shews that prisoner's shew of insanity was entirely feigned. The nature of the wounds, and the instrument with which they were inflicted, and the helpless position of the woman, gagged on her bed, sufficiently indicate an intent to kill, though possibly on sudden impulse, for it is not clear that the *dhao* was borrowed for any other purpose than it had been before, i. e. to break open betel-nuts. We think that the judge should have referred the case under Section 6, Act XXXI. of 1841. As it is, we cannot enhance the punishment inflicted by him. The appeal is rejected.

PRESENT:

G. LOCH AND H. V. BAYLEY, ESQS., *Officiating Judges.*

GOVERNMENT, WOOMACHURN SIRCAR AND ANOTHER

Jessore.

*versus*

1857. KHIDIR GAZEE (No. 13,) RADHAMOHUN PAUL (No. 14,) SUNUR OODHI ALIAS SULEEM OODHI (No. 15,) SOOKCHAND LUMBURI (No. 16,) PUCHAI BHISTI ALIAS PORUSHOOLAH (No. 17, NON-APPELLANT,) MO-HADEB CHUCKERBUTTY (No. 18,) AZIM OODHI (No. 19,) ENAYETOOLLAH (No. 20,\*) BOSSIROODHI (No. 21,\*) AND TORIKOOLLAH (No. 22,\*)

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GAZEE  
and others.  
  
Appeal re-  
jected, the  
confessions  
of the prisoners  
supported by  
the finding of  
property being  
considered suf-  
ficient. Con-  
viction, in re-  
gard to one  
prisoner, mo-  
dified.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, Woomachurn Sircar, attended with wounding of the abovenamed Woomachurn and plunder of cash and property, belonging to him, valued at Rupees 240-1-0 and of property valued at Rupees 73-3-6, belonging to the prosecutor, Rupchand Ghose, on the night of the 9th of May, 1856, corresponding with 28th Bysack, 1263 B. S.; 2nd count, Nos. 14, 15, 17, 19, 20, 21 and 22, knowingly having had in their

\* Acquitted by the lower court.

possession portions of the property acquired by the above dacoity. 1857.

CRIME ESTABLISHED.—Nos. 13, 16 and 18 are convicted on the 1st count of the crime charged. Nos. 14, 15, 17 and 19 on both counts of the crime charged.

Committing Officer.—Mr. E. W. Molony, officiating magistrate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 26th of July, 1856.

*Remarks by the officiating sessions judge.*—The complainant, Woomachurn, states he was asleep with his family, on the night of the 28th Bysack last (corresponding to the 9th May) when he was aroused by receiving a blow on his side. He jumped up and found he was surrounded by a number of ruffians, who were plundering his house. He tried to make his escape in one direction, but there one of the dacoits struck him, and he made off to try and succeed in another quarter. Here a man struck him with a spear and knocked out one of his teeth. From fear more than real injury he fell down and there laid stupified till the dacoits had gone, when his neighbours came to see and learn what had happened, accompanied by the village chowkeedar who, as usual, was on his rounds in another direction and arrived too late to be of any service.

The property plundered consisted principally of cash Rs. 201 8 annas and the remainder, cloths, brass utensils, and some few ornaments. About Rs. 70 worth of the property plundered belonged to Rupchand Ghose, brother-in-law of Woomachurn, and had been brought to her brother's house by the wife of Roopchand, since the latter was put into jail in some affray case. The complainant, Woomachurn, did not recognize any of the dacoits. In fact it was a stormy, wet, dark night, rendering it impossible to notice distinctly any features. In his deposition before the police, he stated it was his belief the dacoity had been committed by some released convicts staying in the neighbourhood, the names of three of whom he mentioned. Kalloo Sirdar, one of these, was immediately called upon by the police, but denied having had anything to do with the dacoity. He said, however, he had reason to believe, Khidir Gazee, prisoner No. 13, was one of the party. The latter was then arrested, admitted his guilt and gave the names of others. The prisoners, Nos. 14, 15, 16, 17, 18 and 19, were arrested and likewise confessed. These confessions they again confirmed before the magistrate. In this court all the prisoners plead not guilty, ignoring the recorded confessions taken by the police and the magistrate.

The confessions of prisoners, Nos. 13, 14, 15, 16, 17, 18 and 19, are attested by respectable witnesses, who assert that the confessions were voluntary and that no kind of compulsion or persuasion or intimidation was exercised or made use of; they

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likewise affirm that the prisoners that confessed were at the time in the full possession of their faculties and not in any way under the influence of any drug or intoxicating liquor.

The evidence on the record against prisoner No. 13, is the testimony of witnesses, Nos. 5, 6, 25 and 26, who were present at the confessions. The prisoner pleads the confessions must have been the work of his enemy, Kaloo Sirdar, that he was in his own house on the night of dacoity and that he is a man of good character. He cites three witnesses to substantiate his defence. They are all his own relatives, but depose that they know nothing in the prisoner's favor. His witnesses to character, likewise his relatives, state they fear he is a bad character.

Against prisoner, No. 14, are the depositions of five witnesses present when he made his confessions, and those of witnesses, Nos. 31, 32 and 36, who were present when the police recovered articles of property, Nos. 1 and 2, a piece of black cloth and a *Dacca sati* on the prisoner's own pointing out. It appears by the deposition of witness, No. 31, that the prisoner, the day after the dacoity, brought to him the articles and asked him to take care of them for him until he called again. The prisoner in his defence pleads that the case has been maliciously got up against him by one Kaloo Sirdar and that the witness, No. 31, is a connection of the police darogah. He cites witnesses to prove these points and to certify to his good character. The witnesses, as to the pleas in defence, deny all knowledge of the subjects. Those to character say the prisoner earns an honest livelihood as a doctor.

Against prisoner, No. 15, are the depositions of witnesses, Nos. 25 and 26, to his confession before the magistrate and those of witnesses, Nos. 37, 38 and 40, who were present when the prisoner pointed out to the police articles of property, Nos. 3 and 4, a brass *ghuti* and a *galicha*.

The prisoner pleads that the case is maliciously got up against him by one Baseeroodeen, burkundaz, who must have drugged him previously to his going before the magistrate. He cites eight witnesses in his defence, but their evidence is generally not in the prisoner's favor, as for many months in the year they never knew where he is or what he is doing.

Against prisoner, No. 16, are the witnesses to the confessions. He pleads that the police beat him till he was out of his senses and that on the night of the dacoity he was at his own house. Four witnesses are cited for the defence, but three, who were present, cannot state they know any thing in support of the pleas.

Against prisoner, No. 17, is the evidence of witnesses to the confessions and that of witnesses, Nos. 41, 42, 43 and 44, to recovery of the property pointed out by the prisoner. The arti-

cles recovered, Nos. 5 and 6, were a *khatta* and a printed *dolai*. The latter was given by the prisoner to witness No. 41, who is a tailor to make up into a *chapkan* for him.

The prisoner pleads that he sold the printed *dolai* to witness, No. 41, for five annas and that it was his own. Also that on the night of the dacoity he was at his house. Five witnesses were cited and four who have attended, deny any knowledge of the points of defence.

Against the prisoner, No. 18, is the testimony of the witnesses present at his confessions. He pleads an *alibi* and cites three witnesses, but they are ignorant of the points in defence and speak unfavourably of the prisoner's character.

Against prisoner, No. 19, are the witnesses to his confessions and witnesses Nos. 51, 52 and 53, who were present when he gave up to the police, articles of property, Nos. 7, 8 and 9, all pieces of wearing apparel, the prisoner pleads that two of the articles belonged to one Gobind Buxee, and the other was his own. Five witnesses are cited for the defence, but they are ignorant on the points pleaded and five witnesses to character.

The latter speak unfavourably of the prisoner's character.

The trial was conducted under the provisions of Act XXIV. 1843, Section 3.

I convict the prisoners, Khidir Gaze, No. 13, Sookchand, No. 16, and Mohadeb, No. 18, on their own confessions and the evidence on the record, which puts it beyond doubt that the dacoity to which they confessed participation in occurred, on the 1st count, and sentence the prisoner, Khidir Gaze, No. 13, to imprisonment with hard labor in irons for seven years in banishment and to a fine of Rs. 313, under Act XVI. 1850, which when realized, to be paid to the complainants.

I defer passing sentence on the prisoners, Nos. 16 and 18, until the result of trial of calendar, No. 6, of June, which will be heard to-morrow and in which these prisoners stand committed.

I convict the prisoners, Nos. 14, 15, 17 and 19, on their own confessions and the evidence on the record, on both counts of the calendar, and sentence them (with the exception of prisoner, No. 17, against whom sentence is deferred until the conclusion of the trial of calendar, No. 6, of June, in which he is again committed) to imprisonment with hard labor in irons for seven years in banishment, and to a fine of Rs. 313, under Act XVI. 1850, which, when realized, to be paid to complainants.

Through inadvertance, I find it is mentioned in the magistrate's abstract of examination grounds that the prisoner, No. 19, did not confess in the foudjary. His confession is, however, on the record and bears date the 17th May last, having been taken in the presence of the law officer.

A consolidated sentence of imprisonment with hard labor in

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irons for fourteen years' imprisonment in banishment has been passed this day on the prisoners, Nos. 16 and 17, and entered in the trial of calendar No. 6, of June. The prisoner, No. 18, Mohadeb Chuckerbutty, has this day been acquitted in the trial of calendar, No. 6, of June. I sentence him therefore on this conviction to imprisonment with hard labor in irons for seven years in banishment and to a fine, under Act XVI. 1850, of Rs. 313. The sum when realized from among all the prisoners or any one of them is to be paid to the aggrieved parties in this case.

*Remarks by the Nizamut Adawlut.*—(Present : Messrs. G. Loch and H. V. Bayley.) The prisoners, Nos. 13, 14, 15, 16, 18 and 19, have appealed from the orders of the sessions judge. Nos. 14 and 19, plead that the prosecutor's statement is untrue, and that they were induced to confess by the persuasions of the police, who held out promises of release and reward to them. No. 18, pleads his good character, and states that he was compelled by the darogah to confess; and that had he confessed before the magistrate he would have signed the statement himself, as he can write. The other prisoners merely appeal on the record.

The appellants have all been convicted of dacoity on their own voluntary confessions before the police and magistrate, and their confessions are attested by the evidence of the witnesses in whose presence they were made. Nos. 14, 15, 16 and 19, are also convicted on the second count. The confession of Radamohun, No. 14, amounts, however, only to accessoryship before and after the fact; for he denies having been present with the gang at the prosecutor's house. We consider the confessions to have been voluntarily made; and corroborated as they are by the discovery or surrender of property belonging to the prosecutor in the possession of some of the prisoners, we believe them to contain a true statement of the facts of the case; and therefore, correcting the finding in the case of Radamohun, we confirm the sentence passed by the sessions judge on the prisoners, Nos. 14, 15, 16 and 19, and reject their appeal. Orders were passed regarding the prisoner, Khadir Gazee, No. 13, (who also appeals now) on his separate appeal of 23rd September, 1856.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND BABUROOLLAH

*versus*

SUMEEROODEEN.

Backergunge.

CRIME CHARGED.—Severely wounding the prosecutor Babur-  
oolah on the 27th July, 1856.

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CRIME ESTABLISHED.—Severely wounding the prosecutor  
Baburoollah.

February 26.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of  
Backergunge.

Case of  
SUMEEROO-  
DEEN.

Tried before Mr. F. B. Kemp, sessions judge of Backergunge,  
on the 2nd September, 1856.

Appeal re-  
jected; pleas  
being unsup-  
ported by evi-  
dence, on the  
record, and  
highly impro-  
bable.

*Remarks by the sessions judge.*—In concurrence with the *fut-*  
*wa* I convict the prisoner of the crime shewn in column 10  
and sentence him as stated in column 12 of this statement.

The witnesses for the prosecution clearly prove that the  
prosecutor was very severely wounded by the prisoner with a  
*dao*.

The defence is not supported by the evidence of the witnesses  
for the prisoner. These witnesses though mostly relations or  
connections of the prisoner are unable to say any thing in his  
favor.

*Sentence passed by the lower court.*—To be imprisoned with-  
out irons for three (3) years and to pay a fine of one hundred  
(100) rupees on or before the 9th September, 1856, or in default  
of payment to labor until the fine be paid or the term of sen-  
tence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G.  
Loch and H. V. Bayley) In this petition of appeal, the pri-  
soner repeats statements made before the magistrate and sessions  
judge, viz. that the complaint was brought up against him in  
the hope of depriving him of his landed property, and that while  
he was illegally detained in Cullunder Khan's premises, the pro-  
secutor was wounded by Cullunder Khan, who caught him in  
the act of committing adultery with his (Cullunder's) wife, and  
obliged the prosecutor to charge the appellant with the crime;  
he (Cullunder Khan) being the party interested in securing the  
appellant's landed property. The appellant adds that his wit-  
nesses (mentioned in the petition of appeal) were not sent for  
by the magistrate or the sessions judge; that there are serious  
discrepancies in the evidence; and that as he had no ill-will to  
the prosecutor, it is unlikely he should have assaulted and

1857. wounded him for a trifling debt, as alleged by the prosecutor, but which in fact was not due.

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We reject the pleas, advanced by the appellant, of illegal confinement, and of the prosecutor having been wounded by Cullunder Khan, because they are unsupported by any evidence; and are also exceedingly improbable. On a reference to the record, we find that when examined by the magistrate, the prisoner named Cullunder Khan's wife and mother as witnesses to prove that Cullunder had wounded the prosecutor for having adulterous intercourse with his wife; and as the record bore out the presumption that these people were named merely with the object of annoying Cullunder Khan, the magistrate exercised his discretion in not summoning them. But those witnesses, whom the prisoner named on his commitment, were in attendance at the sessions, and their testimony does not at all exculpate the prisoner, against whom the charge is fully proved by the consistent testimony of the eye-witnesses; and it is not shewn how it is otherwise than consistent. There is no doubt in our minds that the prisoner was the party who attacked and wounded the prosecutor. We reject the appeal.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

RUHEEMOODEEN

Behar.

*versus*

1857.

CULLOO LODH (No. 1, APPELLANT,) KHEEALÉERAM (No 2,) NUNNEE KHAN (No. 3,) MAHOMED KHAN (No. 4, APPELLANT,) AND PEËTA LODH (No. 5.)

February 26.

Case of  
CULLOO LODH  
and others.

CRIME CHARGED.—1st count, Nos. 1 and 2 theft of money and property by breaking open a box valued at Rs. 996-8; 2nd count, Nos. 3, 4 and 5 accessories before and after the fact in the above charge.

CRIME ESTABLISHED.—Nos. 1 and 2 theft of money and property by breaking open a box valued at Rs. 996-8, and Nos. 3, 4 and 5, accomplices therein.

Committing Officer.—Mr. H. Davies, officiating deputy magistrate of Sherghotty with the powers of a magistrate.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 20th August, 1856.

*Remarks by the sessions judge.*—The prosecutor, a resident of Delhi, had taken goods, shoes, &c. for sale to Bengal, whence he was returning

Prosecutor's deposition. of Delhi, had taken goods, shoes, &c. for sale to Bengal, whence he was returning

Appeal re-  
jected; the  
confessions of  
and proof  
against pri-  
soners, being  
deemed suf-  
ficient. Con-  
viction modi-  
fied in regard  
to one prison-  
er, guilty of  
privity only.

home by the Grand Trunk Road with the sale-proceeds, rupees 980 in hard cash, and a few other articles altogether valued at rupees 996-8 contained in an ordinary wooden box, simply fastened with nails and an outer cordage. He had conveyed the box as far as the Burakur river by a coolie. Here he fell in with the five prisoners and Tota (witness No. 15) up-country men of different districts in the Upper Provinces, strangers to the prosecutor, drivers and guards in charge of four carts, travelling together with merchandize consigned to Mirzapore. He struck a bargain to accompany them on foot, on their conveying his box to Benares for one rupee. The box was accordingly placed on Mahomed Khan, prisoner No. 4's cart. After passing some ten or twelve stages the party pretended they had fallen short of road expenses, whereon prosecutor opening his box took out rupees 25, of which he lent Culloo, prisoner No. 1, rupees 16, and Mahomed Khan, prisoner No. 4, rupees 9, as acknowledged by both. After this the party travelled on very happily together as far as Sherghotty, where Culloo, prisoner No. 1, and Khecaleeram prisoner No. 2, gave out that they would proceed beforehand to Mirzapore and return with the money they had borrowed from the prosecutor. The same day, Wednesday, the rest of the party reached Nowghur near Mudunpore, the first stage to Sherghotty. Here Tota, witness No. 15's cart broke down. A halt took place the whole of the next day, Thursday, the 12th June last, when Nunnee Khan, prisoner No. 3, and Mahomed Khan, prisoner No. 4 gave the prosecutor a feast, made him drink toddy and he slept soundly all that night. He awoke towards morning and looking for his box, it had disappeared. He alarmed the whole party, who pretended to search for the box in vain. Prosecutor complained to the police jemadar stationed at Mudunpore, who making a search found the box rifled

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Jemadar's Report, 13th June, No. 2. of its contents a short distance from the carts in

the adjoining jungle. The prosecutor being unable to support his complaint, the jemadar let the party go, and they proceeded on their way westward until overtaken by the jemadar of the Sherghotty thannah at the next stage near Aurungabad, whence they were all taken back to Sherghotty. Afterwards Culloo,

Bissumblhur Misser's report No. 9, 15th June.  
Mudunpore Jemadar's report No. 10, 19th June.

prisoner No.  
1, and Khe-  
alee, prisoner

No. 2, made their appearance at Mudunpore accompanied by Sreenath Misser, servant of the Mirzapore merchant, to whom the merchandize was consigned, charged with money for road-

Sreemunt Misser's examination before deputy magistrate on 27th June, and witness No. 8, in the calendar but absent before this court.

expenses, and  
to take charge  
of the con-  
signment. On



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this, they also were forwarded on to Sherghotty, where Nunnee Khan, prisoner No. 3, the guard of Mahomed Khan prisoner No. 4's cart and Mahomed Khan himself, had already before the Sherghotty police, on 17th idem, exculpated themselves and inculpated Culloo and Kheelelee as the thieves. At first before the police and deputy magistrate of Sherghotty, on 26th idem, both Culloo and Kheelelee very obstinately pleaded their innocence, urging that the robbery had taken place during their absence, until accidentally a little basket amongst Kheelelee's effects, attracted the deputy magistrate's attention by a jingling sound, and on questioning Kheelelee, he said it must be that of pice or cowrees, and not of rupees or gold mohurs. On being cut, open the basket was found double breasted and three

Culloo and Kheelelee's examination before deputy magistrate of 27th June, Sunnath Misser's examination. gold mohurs fell out. This

Witness No. 2, Doorgapershad Mookhtear.

" " 3, Syud Kurreembux Mookhtear.

suddenly brought forward Sun-

nath Misser, who thereon produced Co.'s Rs. 12-8, 14 Furuckabad Rs., and 9 gold mohurs, which, he said, Culloo had given him the day before at Mudunpore, and on his, Sunnath's challenging him how he had become possessed of so much money, when unable to pay his road-expenses, Culloo replied he had found it at the road police station, and then on charging him with having robbed the prosecutor, he answered if it pleased Ram they would get off. This discovery surprised the culprits, and both Culloo and Kheelelee thereon confessed, that with the

Witness No. 2, Doorgapershad Mookhtear.

" " 3, Syud Kurreembux Mookhtear.

cognizance of Nunnee

Khan, Mahomed Khan and Peeta, they had broken open the box and plundered it of its contents, of which, by previous agreement with the three last, they hid 16 Rs. under a *bur* tree for their use and then hurried off with the rest to Mirzapore sometimes on foot and sometimes on *ekkas*. Here they managed to exchange some of the money for gold mohurs and they left in deposit with Premsook Panrey (witness No. 16,) Rs. 560, and with Ramjeewunlall, witness No. 17, Rs. 50. On this the deputy magistrate deputed the Sherghotty darogah accompanied by the prosecutor and Culloo, prisoner No. 1, to proceed to Mirzapore and recover this money, which was delivered up by

Proceedings deputy magistrate of 3rd July.

the holders at once on demand. Premsook Panrey gave up the Rs. 560, untouched in the identical bag as made over to him by Culloo, and which

Witness No. 16, Premsook Panrey.

" " 4, Kungla Teylee.

the prosecutor has been singularly

Witness No. 5, Culloo Kulwar.

Ruheenooddeen, prosecutor.

able to identify as the

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one, which contained all his cash inside the box. He made use of this bag on his way down to Bengal to store sweetmeats, presents from his relatives and friends on parting. The rats had attacked the sweetmeats and nibbled several holes in the bag. In like manner the other depositary, Ramjēwunlal, gave up the Rs. 50, deposited by Kheeealee, and for which he had granted a receipt, which had been also singularly forthcoming in the first instance out of Kheeealee's basket, which had concealed the three gold mohurs. This receipt has been duly verified by its

Witness No. 9, Jokoo Kayet.

" " 10, Ujoodheea Lall.

" " 11, Isswar Ugrehiee.

writer and its two subscribing witnesses.

On 29th June, Kheeealee pointed out to the police the *bur* tree,

Kheeealee's examination of 29th June, No. 42.

where the Rs. 16 had

been hid, but from whence it had been removed. On 3rd idem Mahomed Khan told the police, Nunnee Khan had taken this money, which had been partly disbursed at the shops, whilst Nunnee Khan, on the other hand, on the same date told the deputy magistrate that Peeta, Mahomed Khan's servant, had taken up the money, of which they had divided 13 Rs. amongst each other, including Tota (witness No. 15,) and spent 2 Rs. at the shops. Peeta on same date told the deputy magistrate that he had received 3 Rs. out of the Rs. 16. There is also the evidence

Witness No. 12, Mussamut Dooleeah.

" " 13, Joodha Hulwace.

" " 14, Ghowsee Bhutteearah.

of the within that Nunnee Khan spent above Rs. 2,

in expenses at Mudunpore.

Before this court Culloo pleaded "*guilty*," stating that Nunnee Khan brought the box and broke it open; when after taking therefrom Rupees 16 and leaving it at the *bur* tree he and Kheeealee, in the manner already stated, hurried off with the balance and disposed of it at Mirzapore. Kheeealee pleaded "not guilty," but his defence amounts to an acknowledgment of all that is material as already narrated. He also says Nunnee Khan brought the box, but that Culloo broke it open; Nunnee Khan and Mahomed Khan simply deny though they admit the recovery of the stolen property through Culloo and Kheeealee. Nunnee Khan also admitted the obtaining through Peeta Rupees 16, which, he supposed, was Peeta's own, a palpable improbability in itself, when Peeta was Mahomed Khan's servant. Peeta pleaded utter ignorance.

The jury unanimously convict the prisoners on the counts charged.

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and others.

Doybeepershad of Nowunga, Zillah Behar; Pershad Sow of Gya, Zillah Behar; Meer Shefaiut Hussein of Ustowah, Behar; Syud Gour Alli of Selimpore, Behar.

As already  
shewn, Culloo  
and Kheea-  
lee's guilt had

been conclusively brought home to them by their own inculpatory statements corroborated by their own conduct, the recovery of so much of the stolen property and the positive circumstances of the case as affecting each directly. The proof of guilt of the three other prisoners is necessarily of a weaker kind, yet I find as much reliance may be placed on the fact of the criminal concealment of 16 Rupees of the stolen money at the *bur* tree and its subsequent appropriation and division between all three, which each have acknowledged, and which, under the circumstances, could not have taken place without their full knowledge at the time of its guilty acquirement and concealment; the latter, I conclude, purposed with the same cunning forethought, which hurried off Culloo and Kheea-lee to Mirzapore with the bulk of the stolen money, to save appearances and search until the alarm of the occurrence had passed off. Moreover Nunnee Khan and Mahomed Khan inculpated each other before the deputy magistrate on 27th June, each saying that the other had taken the prosecutor's box off the cart and given it to Culloo and Kheea-lee, Tota (witness No. 15,) had also been inculpated by Nunnee Khan, but he himself has always avoided the slightest admissions tending to inculcate himself or others, and no proof of his complicity or accessaryship has been forthcoming. As, however, he has never given the slightest information, his appearance as a witness was of no value. Culloo and Kheea-lee's confessions before the deputy magistrate were not authenticated in the manner prescribed by Circular Order No. 54 dated 16th July, 1830, but, confirmed as they have been by both these prisoners themselves before this court, the formal omission itself is fortunately of no moment. Mr. Davies' attention, however, has been drawn to the matter. The successful detection of the culprits was entirely owing to the pains and tact taken by Mr. Davies, is highly creditable to him and is illustrative of the value of magisterial supervision, when close at hand, for the criminals' plans were so well laid, and their bearing so daring, that as far as the police were concerned, they might have escaped altogether, as they did in the first instance out of the hands of the Mudunpore Jemadar. There has been so much system and cautious design in this robbery throughout its detail, that it seems impossible the prisoners would have run the risks and taken the precautions they did, had they not been adepts at this kind of plunder. The exemplary punishment of such characters seems called for, and they have been accordingly sentenced as below. I convict Culloo and Kheea-lee on the 1st count, on full proof, and Nunnee Khan, Mahomed Khan and Peetah as accom-

N. B. The vernacular calendar according to which the trial proceeded committed the prisoners both as accomplices and accessaries. plices therein on strong presumption.

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CULLOO LODH  
and others.

*Sentence passed by the lower court.*—To be imprisoned with labor and irons Nos. 1 and 2 each for seven years and two years in lieu of stripes altogether for nine years; Nos. 3 and 4 each for seven years, and No. 5 for five years from 20th August, 1856. The restitution of the balance Rupees 150-3 ordered under Act XVI. of 1850, to be recovered from all the prisoners.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This appeal is on the part of two prisoners out of five convicted. Prisoner No. 1, Sheikh Culloo, urges that he merely carried out the orders of prisoner No. 2, Khealce, and prisoner No. 3, Nunnee, in receiving the money from them, and that they are the really guilty parties. Prisoner No. 4 urges that he can be in no way held responsible for prosecutor's loss, as he was not in charge of prosecutor's property, and that the statements of the other prisoners shew that he (prisoner No. 4,) was not a party to the theft; that no property was found on him; and that as his home was forty miles from the place of the occurrence, he could not call witnesses.

In regard to prisoner No. 1, we cannot find any ground for interfering with the order of the sessions judge. His confessions before the deputy magistrate and sessions judge are proved to have been voluntary; and taken together with the direct evidence against him which stands in no way refuted, and is very complete and circumstantial, prove his guilt.

In regard to prisoner No. 4, we do not find more than privacy. It is true that the statements of the other prisoners would shew him to be at least an accessory before and after the fact, if the circumstances of the case supported those statements. But he is not shewn to have been concerned in the taking the prosecutor's box off the *ghuree*, or in the breaking it, or in the rifling and disposing of its contents. His privacy, however, is shewn by his own statement to the deputy magistrate, which is proved to be correct and voluntary, coupled with the fact that he was with the party all along, and that the box was on his cart, and he had at least a knowledge of the appropriation of the 16 Rupees of the prosecutor's money. We affirm the sentence in regard to Culloo prisoner No. 1. We reduce it to 18 months from the 1st August, 1856, in regard to prisoner No. 4, with labor, commutable on payment of a fine of 100 Rupees, payable in 20 days after intimation of this order.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND SONARAM SIRCAR

*versus*

BUDDUN MALLO (No 24,) ROOPCHAND MALLO (No. 25,) SUMBHOONATH MALLO (No. 26,) TOOKANY MANJEE (No. 27,) AND JEBUN MANJEE (No. 28.)

Backergunge.

1857.

February 26.

Case of  
BUDDUN  
MALLO MAN-  
JEE and  
others.

CRIME CHARGED.—1st count, theft of property (rice) valued at Rs. 338-4; 2nd count, embezzlement of the above property, either in Magh or Phagun 1262.

CRIME ESTABLISHED.—Embezzlement under Section 8, Act XIII. of 1850.

Committing Officer.—Mr. H. A. R. Alexander, magistrate of Backergunge.

Tried before Mr. F. B. Kemp, sessions judge of zillah Backergunge, on the 1st September, 1856.

Appeal re-  
jected; pleas  
urged being  
considered in-  
sufficient to  
warrant inter-  
ference with  
the order of  
the sessions  
judge.

*Remarks by the sessions judge.*—In concurrence with the *futwa*, I convict the prisoners of the crime stated in column 10, and sentence them as shewn in column 12 of this statement.

The prisoners admit receipt of the cargo of rice, and their defence is that an accident happened to their boat, and that they were obliged to shift the cargo to another boat belonging to one Gooroo Churn who made away with the cargo. But this defence cannot be credited, for had it been a true one the prisoners would have informed the shipper of the cargo, of the accident to the boat and the transfer of the cargo to another party. This they entirely failed to do, nor can they prove the transfer of the cargo, to Gooroo Churn; they are clearly guilty of embezzlement under Section 8, Regulation XIII. of 1850.

*Sentence passed by the lower court.*—Imprisonment with labor in irons for five (5) years and a fine under Act XVI. of 1850 of Rupees 338-4-0 to be recovered from the prisoners jointly or severally.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners have appealed; Buddun Mallo, No. 24, on the plea that after his boat had sunk in zillah Backergunge he made over the remainder of the cargo of rice, belonging to the prosecutor, which he had managed to save, to one Gooroo Churn Manjee, also in the employ of the mohajun, and that Gooroo Churn had sold it at Muddungunge in zillah Dacca, and not accounted for the proceeds; that on searching he found Gooroo Churn at Naraingunge, in zillah Dacca, and that the latter admitted having sold the rice, and in the presence of witnesses promised to refund the amount, but afterwards denied

having done so ; and while inquiry was being made into the matter by Nityanund Sahoo, as referee, Gooroo Churn decamped ; that appellant then applied to the zemindar, who would not interfere, and he ultimately lodged a complaint against Gooroo Churn at the Tengrakola thannah, in zillah Furreedpore, but the officer in charge refused to forward his information to the magistrate, and merely entered it in the diary. Appellant adds that he called witnesses to prove the admission, and promise made by Gooroo Churn, but that the magistrate and sessions judge failed to send for them ; that the prosecutor in this case is an ill-disposed person, and seeks his ruin ; that the people living near the spot where the boat was sunk, should have been examined, and a sketch of the place made ; that as he did not confess to having misappropriated the rice, but gave it over to Gooroo Churn, the mohajun's claim against him, if he has any, could only be prosecuted in a regular suit.

The other prisoners plead that being only boatmen they are not responsible ; that their boat sunk, and they made over such part of the cargo as was saved to Gooroo Churn, and were induced to do so because Nemaye Manjee, nephew of the prisoner Buddun, and Ram Tunnoo Manjee, a friend of his, were on board.

The appellants have failed to prove in any way delivery of the alleged quantity of rice to Gooroo Churn, although they admit there were people resident near the spot where the boat sunk, and the cargo was saved, and transfer of it was made. Moreover the pleas of Buddun, prisoner, No. 24, in his petition of appeal, as regards his going to Naraingunge, and as to Nityanund Sahoo's inquiry, were not urged before the magistrate, nor on the trial at the sessions ; nor were any witnesses called to prove the admission made by Gooroo Churn. It is stated by the prisoners that they never took direct steps to inform the owner of his loss, and it is admitted by them that when their boat sunk they went off to their own homes, although the residence of the owner of the rice appears from the record to be as near to the place where the boat sunk, as their own houses. Further, when Bancharam, the mohajun's gomashtah, witness, No. 19, endeavoured to ascertain from them what had become of the cargo, they kept out of the way, and avoided having communication with him ; and the only witnesses the prisoners have called, are relatives or neighbours, who state that they *heard* from the prisoners that the boat was sunk, and that they had made over the cargo to Gooroo Churn. No sufficient grounds for interfering with the orders of the sessions judge having been urged, we reject the appeal.

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February 26.

Case of  
BUDDUN  
MALLO MAN-  
JEE and  
others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*

East-Burdwan.

KALACHAND GHOSE.

1857.

February 27.

Case of  
KALACHAND  
GHOSE.Appeal re-  
jected; per-  
jury being wil-  
ful evident on  
the record.

CRIME CHARGED.—Perjury in having, on the 31st July, intentionally and deliberately deposed under solemn declaration taken instead of an oath, before the deputy magistrate of Jehanabad, that one *Ramkisto Dutt* had, in his presence, tutored certain witnesses as to what they were to depose to, and in having, on the 8th August, 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the officiating sessions judge of Burdwan, that *Ramkisto Dutt* had not spoken to these witnesses in his presence; such statements being contradictory of each other, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of East Burdwan.

Tried before Mr. J. E. S. Lillie, officiating sessions judge of East Burdwan, on the 27th September, 1856.

*Remarks by the officiating sessions judge.*—The contradictory statements are described in the charge.

The prisoner pleads in his defence, that owing to his youth and to his being frightened when he gave his evidence at the sessions, he forgot (what he had to say).

Concurring in the *futwa* of the law officer, I convict the prisoner, and sentence him to three years' imprisonment with labor in irons.*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The pleas set forth by the prisoner's counsel in appeal are that his client is of tender years, illiterate, and was very frightened when he gave his evidence, and that he merely assented to what was written by the mohurrir, and cannot therefore be convicted of having committed wilful and deliberate perjury.

We find, on reference to the record, that the prisoner was seventeen, quite old enough to know right from wrong and truth from falsehood; and that he was not the ignorant and frightened boy represented by counsel. The deposition given before the deputy magistrate is in detail, and appears to have been intelligently and deliberately given, and from the character of the

answers to the specific questions put to him by the sessions judge, it is evident that the prisoner must have been perfectly aware of what he was saying, when examined by the deputy magistrate. We therefore reject the appeal.

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February 27.

Case of  
KALACHAND  
GHOSH.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

GOVERNMENT

*versus*

BUDDHOO MULLICK.

24-Pergun-  
nahs.

1857.

February 28.

Case of  
BUDDHOO  
MULLICK.

CRIME CHARGED.—1st count, theft of Company's Rupees 650, and of a bag, the property of Mahomed Saduck, he being at the time of committing the theft a servant of the said Mahomed Saduck; 2nd count, receiving and keeping in his possession Rs. 112-5, and a bag, well knowing the same to have been obtained by theft.

CRIME ESTABLISHED.—Theft and receiving and keeping in his possession Rs. 112-5, and a bag, well knowing the same to have been obtained by theft.

Committing Officer.—Mr. H. L. Dampier, magistrate of Howrah.

Appeal re-  
jected; theft  
being deemed  
of proven on  
strongest pre-  
sumption.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 10th July, 1856.

*Remarks by the additional sessions judge.*—The prisoner was servant to Mahomed Saduck Irani, lodging at Howrah, Mahomed Saduck and his son, Ramjaun (witnesses Nos. 7 and 8,) left their lodgings at Howrah and went over to Calcutta, on the 24th June, 1856, for the day. They returned home in the evening and finding the old man's (Mahomed Saduck's) bedding spread over the chest (in which he kept his money) and the "tuktaposh" on a level with the chest as usual, thought all was safe. That night no one came to the house, and prisoner did not sleep in his usual place near his master, but moved into another apartment, and the first thing the following morning it was found he had run away with the bundle he kept his clothes in. His master then got alarmed and went to examine his chest, which he found had been forced open, as also a small box inside it; while from the former a bag containing Rs. 536, was missing and from the latter another bag containing 114 Rs. There had been 121 Rs. in the latter, but he had that day taken out of it 7 Rs. to spend in Calcutta. Notice was at once given to the police, and the darogah without a moment's delay visiting the place and seeing how the robbery had been effected,



1857. advised the prosecutor to proceed by the first train to Raneegunge in pursuit of the prisoner. This he did, and on arriving at February 28. the Serampore station, the prisoner, who had walked there and just purchased a ticket for Raneegunge, was seen getting into a carriage, arrested, and taken to the thannah. In his bundle were found (the prisoner before being searched denying he had any money about him) 111 Rs. in the very bag which was in the smaller box, and which the prosecutor's son himself made out of some cloth of his own and easily recognised, and in his *chupkun* 1 rupee 5 annas. These added to the price of the ticket 1 rupees 11 annas make the sum of 114 Rs. exactly. Nothing could be discovered about the other and larger sum, and it is probable the theft was committed by the prisoner in concert with others, his *share* being the bag and 114 Rs. His defence confirms the suspicion against him. He was engaged by the prosecutor at Gya four months ago only; he cannot name a single relative or witness to character even, and he cannot say in what thannah or in what pergunnah his home is in the Patna district. He gives the name of the *village*, probably a fictitious one; and by his own account, he comes from the neighbourhood of Hilsa, twelve or fifteen miles south of Patna, the hot bed of all the thieves and dacoits in Behar. He says he accumulated this money in a former service, but he has never mentioned his having it to a single person, and in fact his guilt is beyond a doubt. In concurrence with the law officer, I convict the prisoner of the crimes charged, and sentence him to five years' imprisonment with hard labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. T. Raikes.) The evidence adduced on the part of the prosecution, as detailed by the sessions judge, in his remarks on the trial, leads irresistibly to the presumption that the prisoner stole the money and bag found in his possession; and the defence set up amounts to nothing, and does not relieve him, in any respect from the consequences the strong presumption of his guilt fairly entails upon him. I see no reason to interfere.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND DEENOOMONEE KHANKEE

*versus*

GOPEE CHUNG.

Mymensingh.

CRIME CHARGED.—1st count, burglary in the house of the prosecutrix and stealing therefrom property worth nine annas.

1857.

CRIME ESTABLISHED.—Burglary.

February 28.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Case of  
GOPEE  
CHUNG.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on 17th September, 1856.

*Remarks by the sessions judge.*—It appears from the evidence recorded on the trial that witness No. 3, Monee Chowkeedar while going his rounds on the night of the 14th Srabun last, went to the prosecutrix's house and called out as usual and saw the prisoner running away from her house when he, the chowkeedar, pursued him and seized him in a ditch and took him to the house of Ramnath talookdar witness No. 6, where he confessed to having committed a burglary in the prosecutrix's house and to having taken two brass utensils with him which he threw away close to the ditch where he was secured. A search for the stolen property was immediately made when it was found.

Appeal rejected. The bad character of prisoner required a more severe sentence.

Before the police and the magistrate the prisoner denied the charge. Before me he stated that being ill, he went to Dulah and Kalleegunge in quest of a Kuberaj, but not finding one there, he came to the station about six *dunds* after night fall; when being interrogated by the people of witness No. 6's house where he had come from, he replied that he came for a Kuberaj's house, but as his people attempted to seize him he ran away, and he was secured and made over to the chowkeedar, and that witness No. 6, would be able to state whether the property had been given to him or not. The prisoner is an old offender, having been already confined for eleven and half years in several cases of burglary and theft, and the proof against him in this case is quite conclusive as to his guilt, the witnesses examined in the case having clearly deposed that after the chowkeedar had secured him, he confessed before them having committed the burglary, and that he pointed out the brass utensils and which have been identified as belonging to the prosecutrix. Under these circumstances, concurring with the *futwa* of the law officer, I convict the prisoner of burglary and sentence him to imprisonment for five years with labor and irons. The prisoner called a few witnesses in support of his pleas, but chiefly relied

1857. on the evidence of Ramnath Talookdar, to clear himself of the charge, but his evidence was unfavorable to him.  
 February 28.

Case of  
 GOPPE  
 CHUNG.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The appeal of the prisoner consists of a general plea that the evidence for the prosecution is contradictory. Prisoner adds that had he not before had a bad name he would not have been now convicted; and that the evidence of witness No. 6 would clear him.

We have read the evidence for the prosecution, and find it clear and consistent; and the testimony of witness No. 6 relied on by prisoner not only does not clear the prisoner, but corroborates the other direct evidence of his guilt.

The return of the record-keeper shews convictions of prisoner for burglary and theft in five cases from 1844 to 1855, involving eleven and half years' imprisonment. We cannot of course enhance the punishment, but we think it necessary to record that the sentence of the sessions judge, is, with reference to the above fact, injuriously lenient.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

# GOVERNMENT AND KYEAH GAZEE

*versus*

ESUFF.

Tipperah.

1857. CRIME CHARGED.—1st count, burglary and theft of property valued at Co.'s Rs. 16-3-6; 2nd count, knowingly having in possession property, valued at Co.'s Rs. 7-3-6 obtained in the above burglary and theft.  
 February 28.

Case of  
 ESUFF.

CRIME ESTABLISHED.—Burglary and theft of property valued at Rs. 16-3-6.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 24th September, 1856.

*Remarks by the sessions judge.*—The prosecutor seized the prisoner in the very act of escaping from his house, into which he had effected a burglarious entry at the dead of night with his, the prosecutor's daughter's, silver necklace and anklets, valued at Rs. 7-3-6 in his possession. He appears to have entered in the first instance the eastern house by cutting a hole through the wall and to have succeeded in taking a silver necklace from the neck of a young child, a relation of the prosecutor's, which, however, has not been recovered. He seems then to have cut

Appeal rejected; the charge being proved, and the plea in defence being most improbable.

the fastening of the door of the western room, in which the prosecutor and his family were sleeping, and to have been detected and seized in the manner already described. The prosecutor, in the joint-magistrate's court, described the value of the stolen property inclusive of the necklace, which was not recovered, at Rs. 15-15. The calendar estimates it at Rs. 16-3-6, which was also the prosecutor's valuation in my court. I am unable to explain this discrepancy otherwise than by adopting the prosecutor's explanation, who says that it has arisen from error on the part of the writer of his deposition in the lower court.

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The three witnesses\* named in the margin, were aroused by the noise consequent on the prosecutor's capture of the prisoner, and hastening to the spot found the two struggling together, the prisoner having a necklace and pair of anklets in his hand, which they knew to belong to the prosecutor, and to be worn by his daughter. They subsequently inspected the burglarious entry, through which the prisoner had made his way into the eastern house.

The prisoner, who pleaded *not guilty*, stated that the prosecutor's patron, Doolah Meah, being dissatisfied with him, had got up this charge through his dependant, the prosecutor. He added that he had been already imprisoned once for five years and again for four years for theft. He called three witnesses, who proved nothing whatever exculpatory of the prisoner.

The Mahomedan law officer pronounced the crime charged to be proved and the prisoner to be liable to *tazeer*.

Adverting to his previous convictions (duly placed on record with the *nuthee*) on one occasion for five, and on another for four years, and on both for burglary, I sentenced him to seven years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. T. Raikes.) The prisoner is an old offender, and was taken in the fact. The evidence seems quite unexceptionable, and the only defence set up is an unlikely story of the prosecutor having got hold of the prisoner and kept him confined in his house during the day, and then falsely accused him of this burglary after preparing two holes in his house to support the accusation. I see no reason whatever to interfere.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND OTHERS

*versus*HURRY SINGH (No. 13,) GOUR SINGH (No. 14,) AND  
ROOPCHAND SIRDAR (No. 15.)

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**CRIME CHARGED.**—1st count, Nos. 13 and 14, theft in the house of the prosecutor's employers by breaking open their *pukha tosha khana*, and stealing therefrom property worth Rs. 787-9, viz. golden articles valued at Rs. 56 and silver ditto gilt with gold at 291 Rs. and ditto without gilt at Rs. 440-9; 2nd count, Nos. 13, 14 and 15 knowingly receiving the above stolen property; 3rd count, No. 15, privity to the fact of the above theft.

Prisoners

convicted;  
their pleas in  
appeal not being  
supported  
by the evidence  
on the record. Remarks  
as to labor commut-  
able on pay-  
ment of fine;  
and to measure of  
punishment.

**CRIME ESTABLISHED.**—Nos. 13 and 14, theft; No. 15, privity to theft.

**Committing Officer.**—Babu Joychunder Gohoo, deputy magistrate of the station of Mymensingh exercising the full power of a magistrate.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 31st October, 1856.

**Remarks by the sessions judge.**—This case was forwarded by the deputy magistrate of Pubnah to the magistrate of this district, the theft having occurred within his jurisdiction.

The prosecutors were not aware of the theft of their property, until the arrest of the prisoners Nos. 13 and 14 in zillah Pubnah with the stolen property in their possession. And it appears that prisoners Nos. 13 and 14 were in the employ of Chundrobullee Debea, one of the prosecutors, and had gone home on leave. The evidence goes to show that one night in the month of Cheit last when witness No. 1, Meelon chowkeedar was going his rounds, he heard from outside of the house that prisoners Nos 13 and 14 were quarrelling about their share of some property, when he went in and asked them what they were doing. On the prisoners observing the chowkeedar approaching them, they put out the light and told him that they were dividing some property which they obtained by plunder from their employer's house at Mooktagucha (in this district) at the same time shewing him a silver *jharee*.

This aroused his suspicions and he immediately apprehended them, the prisoners struggled to effect their escape, but they were secured with the assistance of witness No. 2, and one Goluck Paul (witness No. 4, not present in this court) who

repaired to the spot on the alarm being given by the chowkeedar, witness No. 1, and the next day they were made over to the police of the Pubnah thannah with property marked Nos. 1 to 8, which was found in their possession. During the enquiry the house of prisoner, No. 15, father of No. 13, was searched, when he gave up property Nos. 9 to 16, stating that his son had concealed it underground, and this led to his arrest. Before the police and deputy magistrate of Pubnah, No. 13, stated that No. 14 shewed him the property stating that their employer's *toshakhana* had been plundered, and that as a person was making off with the property packed in a gunny bag, he and another pursued him and recovered the property, and that he and No. 14 placed it underground and after a month and half they went home with the property. No. 14, urged that on going home the property was with No. 13, who promised to give him a share of the same and cautioned him not to mention it to any one. No. 15, pleaded that his son, No. 13, concealed some property underground in his house in spite of all remonstrance, that his son told him that he had plundered the property from his employer's *malkhanah* and that he (No. 15,) pointed it out to the police when search was made in his house. In this court, although the prisoners deny having committed the theft, they implicate each other which almost amounts to a confession. The law officer finds prisoners Nos. 13 and 14, guilty of theft and No. 15, of privity to theft in which I concur.

From the confessions of the prisoners before the police and deputy magistrate of Pubnah, which have been verified by the subscribing witnesses thereto, and in a manner corroborated by their statements in this court, the charge has, in my opinion, been clearly brought home to them; moreover the stolen property was found in their possession and which has been identified as belonging to the prosecutors. They, the prosecutors, had, I remark, no knowledge of the theft until a *roobokaree* was received by the magistrate from the deputy magistrate of Pubnah, but I have to remark that owing to a family-dispute existing between the prosecutors, their property was locked up and under attachment in their *malkhanah* to which neither party had access, and that when they received information of the theft, a door was found broken in the upper story of the house and considerable property was missing. On the above grounds, I convict the prisoners, Nos. 13 and 14, of theft and No. 15, of privity to theft and sentence them, Nos. 13 and 14, each to seven (7) years' imprisonment with labor and irons and No. 15, to (3) three years with labor and irons, and, as I consider that Meelon chowkeedar witness, No. 1, is entitled to a reward for the skilful manner in which he arrested the prisoners with the stolen property, I further direct that a proceeding be forwarded to the magistrate requesting that officer to pay the

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sum of 25 Rs. to the said chowkeedar as a reward for meritorious conduct.

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*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The appeal of Huree Singh, prisoner No. 13, is to the effect, that Gour Singh, prisoner No. 14, gave some property into his charge, stating that it had been found on the road; that he, prisoner No. 13, would not give it up again, but threatened to inform the police, on which Gour Singh, prisoner, No. 14, falsely accused him.

Gour Singh, prisoner No. 14, states that he was not at prosecutor's house when the theft took place; that a party employed by prisoner, No. 13, was carrying the stolen property, accompanied by prisoners, Nos. 13, and two others, and himself, and that he thought that he singly could not cope successfully against so many for its recovery, and so went with them to the house of prisoner No. 13, where some of the property was distributed; and that by the appellants' information to the village chowkeedar, the theft was discovered. Further, that none of the stolen property was found with this prisoner.

Prisoner, No. 15, denies that his son, No. 13, lives with him, and states that he prohibited prisoner, No. 13, depositing the stolen property on his premises.

We have perused the record and find it most clearly and, satisfactorily proved by the confessions and admissions of prisoners, by the evidence of independent witnesses, and by the circumstances under which the property was found, that the conviction is proper. None of the pleas urged in appeal are substantiated. The sessions judge does not seem to have considered sufficiently, in reference to the measure of punishment awarded, that the prisoners, Nos. 13 and 14, were servants of one of the prosecutors. We observe that by an order issued by the Judge in the English department, on the 4th of December last, the sessions judge was directed to pass a revised sentence upon the prisoner Kooopchand Sirdar, (No. 15,) agreeably to Circular Order, No. 8, 7th June, 1847, para. 4, under which he is entitled to have the labor commuted to fine; and to submit the same for the Court's information. We find, however, that this has not yet been done, probably in consequence of the prisoner's appeal having previously, viz., November 24th, 1856, been filed before the sessions judge. He will now issue a legal sentence upon him.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

SHEIKH KOOTABDEE

*versus*

SHEIKH ESOFF (No. 4,) KESUB DHOBEE (No. 5,) SHEIKH DULLUB (No. 6,) SHEIKH NAZEEM (No. 7,) SHEIKH FYZOO (No. 8,) SHEIKH KOODRUTULLAH (No. 9,) SHUMBOO MALEE (No. 10,) MUSST. BESHOREE (No. 11,) AND MOHOBUT KHAN (No. 12.) Mymensingh.

CRIME CHARGED.—Nos. 4 to 10, 1st count, dacoity in the house of the prosecutor and plundering therefrom cash Rupees 100-8, gold mohurs 40 and property consisting of cloth, gold and silver ornaments, China vessels, wooden chest and boxes valued at Rs 93-13, total value of property plundered Rupees 834-5; 2nd count, Nos. 4 to 12, knowingly receiving and keeping the above stolen property; Nos. 11 and 12, 3rd count, privity to the above dacoity.

CRIME ESTABLISHED.—Nos. 4 to 10, dacoity and Nos. 11 and 12, knowingly receiving and retaining property obtained by dacoity.

Committing Officer.—Baboo Joychunder Goocho, deputy magistrate of Mymensingh, exercising the full powers of a magistrate.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 25th October, 1856.

*Remarks by the sessions judge.*—The prosecutor states that when he was twelve years old, he left this country and went to the Mauritius with a gentleman, where he remained for twenty-four years, and on his return home he found that his brothers had died but that two of his sisters were alive, and put up with one of them by name Ameenah, who was married; he had not been more than about twenty days in her house when one day at midnight some eight or nine dacoits armed with *latties*, &c., attacked and forced open the door of the house and on asking who they were, they, the dacoits, assaulted and gagged him and demanded his property; that they then carried off a chest in which his property was, two of the dacoits holding him, but that he did not know who the dacoits were and had only a slight recollection of their features; that he lost the whole of his property amounting in value to Rs. 834-5, consisting of cash in gold mohurs and gold and silver ornaments and wearing apparel. On information being lodged at the thannah of Niklee, the darogah proceeded to the spot, but found no clue to the property then, but it was subsequently brought to his notice that Soo-

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Prisoners  
convicted on  
their confes-  
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Remarks as  
to dates given  
as those of ap-  
prehension of  
prisoners.



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meena and Meelun, having had a family-dispute, accused prisoner No. 11, their mother-in-law of dacoity, when he immediately apprehended her and she confessed that her son No. 4, gave her a *huslee* and foot bangle stating that it was property acquired by him by dacoity, and that as she was unwilling to accept it he (No. 4,) placed it underground amongst some plantain trees, which she pointed out and gave up to the police; in accordance with the information thus acquired, the darogah apprehended prisoner No. 4, who stated that prisoner No. 10, desired him to commit a dacoity in the house of a man who had just returned from service with much property; that he consented and committed the dacoity along with prisoners Nos. 5, 6, 7, 8, 9 and 10. These prisoners were then immediately apprehended by the darogah and they, one and all, confessed before him, and with the exception of No. 6, all the rest gave up a portion of the plundered property.

Before the magistrate prisoners Nos. 5, 7, 8, 9, 11 and 12 repeated their confessions; No. 5, urged that he accompanied the others to commit a dacoity, but stood on the north of the prosecutor's house and that No. 6, gave him a gold nose-ring and a silver foot bangle, which he gave up; No. 7, stated that he was forced to accompany the others and that he gave up all the property he received, except a shirt; No. 8, that he took out the chest from the house, which his companions forced open, and that he received a rupee, a cloth and *setrinjee* as his share of the spoil which he gave up to the police when he was arrested. No. 9 also admitted having committed the dacoity and to having obtained some property; No. 11 stated that her son prisoner No. 4, gave her a *huslee* and a foot bangle and that she secreted them amongst some plantain trees underground; No. 12 that his father-in-law, prisoner No. 6, left a bundle of clothes with his mother, which she shewed him, and that he went with it to his father-in-law to return it, but not finding him, he desired the females of the house to keep it, but they refused, and he went to Chaerparah with his wife, where the police arrested him and they took the bundle of clothes from him; prisoners Nos. 4, 6, and 10, however, denied their mofussil confessions and pleaded ill-treatment by the police. In this court, No. 4, simply denies the charge and states that he lives on the produce of his fields and is of good character; No. 5 resorts to *alibi* for his defence, and names witnesses in support of his plea; No. 6, that he has been implicated in the matter from enmity and that the darogah detained him for a month and ill-treated him, but he declines to examine any witnesses, urging that they have colluded with his enemies; No. 7 urges that he has been implicated by one Pukoo Meah owing to a dispute he has with him regarding some land and that the police detained him for ten or fifteen days, that the cloth which was found in his

house was his own property which he purchased at Dacca, where he was at the time of the dacoity; but of this he adduces no proof; No. 8, that the *setrinjee* and the clothes found in Sachonee's house belong to him, which his brother-in-law sent him from Calcutta; No. 9, pleads *alibi* at Dacca and that he was arrested when returning home at close to Betal, but Nos. 8 and 9, name no witnesses in support of their assertions; No. 10, that he was named by prisoner No. 4, on account of a dispute regarding a cloth, that he gave up the money from his own house and not from under a *man tree*, and that part of the money was saved by him from his earnings and part borrowed from other parties; No. 11, that she did not give up any property and that she is not aware how and by whom it was taken from underground, she having only accompanied the burkundazes to the spot; No. 12, states that one night he was entertaining a guest when his mother informed him that his father-in-law left a bundle of clothes with her stating that he would return for it in a few hours, but as he did not come back he went with it to his father-in-law's, but his mother-in-law would not take charge of it, that he afterwards made over the clothes to his mother-in-law who kept them in Rajdhur's house, from which place he gave them up to the police at his mother-in-law's request.

This case was decided by me under Act XXIV. of 1843. From the evidence recorded on the trial and the confessions of the whole of the prisoners before the police and Nos. 5, 7, 8, 9, 11 and 12 before the magistrate, and the fact of a part of the stolen property having been recovered from them, I have not the slightest doubt of their guilt. Although prisoners Nos. 4, 6 and 10 before the magistrate and all in this court retract their confessions, this is of no avail to them, as I remark that their confessions have been verified by the subscribing witnesses as having been voluntarily made and it has been clearly deposed to by the witnesses,\* that with the exception of prisoner No. 6

\* Nos. 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 49, 50, 51 and 52. all the rest gave up property Nos. 1 to 31, stating that it was acquired by dacoity; and the prosecutor and witnesses Nos. 1 and 2 identified it as belonging to him and his sister. I also have to remark that with the exception of prisoners Nos. 7 and 8 the others do not claim the articles recovered from them, nor can they satisfactorily account as to how they came by them, there being, amongst the articles recovered, pantaloons and shirts which are rarely used by the inhabitants of the country especially by the class to which the prisoners belong. No property was, it is true, found with prisoner No. 6, but he confessed before the police and that he made over a bundle of clothes to his son-in-law, prisoner No. 12, who corroborated this story before the

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police and magistrate and in this court, with this little variation that the clothes were given to his mother, and it is also proved in the evidence of Beebeejan witness No. 53 that his (No. 6's wife) admitted to her that prisoners Nos. 4 and 6 committed the dacoity, consequently taking into consideration his mofussil confession and of his having adduced no proof of the pleas advanced by him, leaves no room for doubt, and he, moreover, assigns no cause of his son-in-law having betrayed him. On the above grounds being of opinion that the prisoners are guilty, I convict prisoners Nos. 4, 5, 6, 7, 8, 9 and 10 of dacoity and Nos. 11 and 12 of knowingly receiving and retaining property obtained by dacoity, and sentence Nos. 4, 5, 6, 7, 8, 9 and 10 to be each imprisoned for the period of 10 years with labor and irons and Nos. 11 and 12 to 5 years each; No. 12 with labor and irons and No. 11 with labor suitable to her sex. The prisoners Nos. 4, 5, 7, 10 and 12 examined a few witnesses to clear themselves but their evidence was unfavorable to them.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The grounds of the appeal of each prisoner are, as follows: Esoff, prisoner No. 4 appeals on the ground that the witnesses whom he names for his defence have not been called; that he is the victim of the enmity of Nuboo Rai; and that the 2 Rs. obtained on his premises were not properly plundered in dacoity. Kesub, prisoner No. 5, urges that his confession was false; and that the property alleged to have been found in his possession was not so; but put there by the police. Doulut, No. 6 pleads that he was kept in the guard room of the thaannah; that his house was two or three times searched in vain; that a bundle of clothes was produced a long distance from his house, and that he never confessed. Nazeem, prisoner No. 7 states that his confession at the police was made under ill-treatment; that his confession before the magistrate was not a true record; that no property belonging to prosecutor, or other than his own, was found with him; and that the one rupee and *loonghee* discovered with him were his own. Fyzoo, prisoner No. 8 pleads that there is no independent evidence; that the evidence for his defence was not duly taken, as of three witnesses called, one only deposed; that the *setrinjee* and one rupee found with Sachonee were his (prisoner's) and deposited with Sachonee by prisoner; and that if this had not been so, Sachonee would have been punished. Koodrutullah, prisoner No. 9 states that his confessions are false; that he was at Dacca at the time of the occurrence; that the statement of Seebeejan, witness No. 48, as to this prisoner having made over to her, property as plundered in this dacoity, is false, and that her house is at two *pukur* distance from his, Shumboo Malee's. Prisoner No. 10 urges that his female relations were confined at the thaannah; that he was so ill-treated that he gave 46 Rs. to

the police to avoid being so ; that these Rupees were those now alleged to have been part of the plundered property found on his premises ; that such property is incapable of identification ; that prisoner No. 4 is his enemy, and therefore denounced him ; that a medical examination would prove the fact of his having been beaten to make him confess ; and that those who have confessed earn their livelihood by being *lattials*, and have been before implicated in crimes. Beshoree, prisoner No. 11, mother of prisoners Nos. 4 and 6, says that she never confessed to the police ; that her son had been kept in confinement for a long time ; and that after twenty-five days the jemadar searched the house, and by some trickery put the property alleged to have been found in her possession, in the place where it was so found. The prisoners all more or less urge detention at the thannah, some for twenty days, some for less periods. Mohobut, prisoner No. 12 does not appeal.

The evidence for the prosecution is clear and consistent, and bears no indication of wilful misstatement.

The prisoners all confessed to the police ; and, except Nos. 4, 6, and 10, to the assistant magistrate. There is direct evidence (in addition to the certificate of the assistant magistrate) of these confessions having been voluntarily made. The property found was not of a nature likely to be difficult of identification, or likely to be ordinarily found in general use amongst natives of the class of prisoners, always residing in Bengal ; for it consisted of portions of European dress, (Nos. 7 and 8) and French manufacture, (No. 12), and was such as the prosecutor, who had but two months or so returned home after upwards of twenty years' absence in the service of French gentlemen at the Mauritius, would be likely to have. This property was all in one box ; and that box contained prosecutor's savings in cash of 40 gold mohurs, and 140 Rs. and cloths, &c. The three other articles in it, Nos. 1, 18 and 19 bracelet, nose-ring, and anklet, were clearly identified as the property of prosecutor's sister. This box was found broken in a tank where the prisoners in their confessions state it to have been put, after it had been forced open, and the contents rifled. The evidence is also clear as to the property identified as prosecutor's having been found either in the possession or on the premises of, or with parties who indicated prisoners as having made it over to them, except that no property was directly found with prisoner No. 6. Such being the case against the prisoners we proceed to consider, *firstly*, their general plea of improper treatment and detention at the thannah, and *secondly*, their special grounds of appeal in each case.

The dates of apprehension are all wrongly stated in column 5 of the calendar : but have been corrected in this Court. It is a matter of surprise that with this same general plea before

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him the sessions judge did not detect and notice the errors. The police record shows that some of the prisoners were at first apprehended and put on security ; and then reapprehended, i. e., No. 4, first on the 15th July, and next on the 31st July ; No. 6, first on the 16th of July, and next on the 1st of August ; Nos. 7 and 8, on the 21st of July, and then on the 2nd August. There is nothing to show clearly when these men were released upon the report of their being on security : nor is there anything in the police record to indicate whether the other prisoners were similarly twice arrested or not. At the same time the defect is not of itself sufficient in our opinion to counterbalance the great weight of direct testimony and circumstantial evidence against the prisoners. We proceed to the specific pleas of each prisoner. Esoff No. 4, pleads that his witnesses were not called ; but this is not true. They were so ; and the evidence they gave to his character is, that he gains his livelihood as a cultivator and *lattial*, and *therefore* they considered him a good character till this occurrence ; but they do not substantiate his defence. There is nothing on the record supporting the plea of Kesub prisoner No. 5 ; the property found in his possession is duly identified as that of prosecutor's. Prisoner No. 6, Dullub, confessed before the police, but not before the assistant magistrate, nor was any of the prosecutor's property found actually and directly with him ; but it is on the record that he and prisoner, No. 4, are brothers, having their property in common, and that prisoner, No. 11, the mother of both, produced a silver bracelet and necklace, (Nos. 1 and 2,) as property given to her by prisoner, No. 4, stating it to have been obtained by dacoity. The prisoner, No. 6, is implicated by the confessions of the other prisoners before the police and assistant magistrate ; and those confessions are corroborated by the essential circumstances of the case, such as, the discovery, character, and identification of the property, and the main incidents of the dacoity, as stated by prosecutor and his witnesses, tallying with those stated by the confessing prisoners. The pleas of this prisoner in appeal are not substantiated, and there is no proof of his plea at the sessions that the villagers are his enemies, and have therefore caused a false accusation. The statement of prisoner, No. 12, (prisoner who has not appealed and is son-in-law of prisoner, No. 6,) before the assistant magistrate and sessions judge that his father-in-law, No. 6, handed over the bundle of clothes identified as prosecutors, and containing articles, Nos. 3 to 15 ; No. 7, being a jacket with buttons, No. 8, a coat, and No. 12, a French handkerchief, afford also strong presumption of this prisoner's guilt. Prisoner, No. 7 is proved to have given up the *loonghee* and 1 Rupee, as property obtained in this dacoity ; and in no way proves his present plea that these were his own. His confessions at the police and before the assistant

magistrate are duly proved. The objection of prisoner, No. 8, to the evidence being that of the inmates of the house, i. e. prosecutor's connections, is too weak to need further notice. Four of this prisoner's witnesses were present at the sessions, but he refused to have their evidence taken. Sachonee, fishmonger, witness, No. 46, proves that the property shown to be prosecutor's, was given him by this prisoner. This prisoner's confessions to the police and assistant magistrate are duly proved. The main plea of prisoner, No. 9, is of an *alibi* at Dacca, which would be readily capable of proof; but none was adduced. His confessions before the police and assistant magistrate are duly proved; and no reason for rejecting the testimony of witness No. 48, Subjan, as to the prosecutor's property, found with her, having been put in her house by this prisoner, is shewn. In regard to Shumboo Malee prisoner, No. 10, his plea in appeal is somewhat contradictory; for, if, as he says, he was beaten to make him confess, his confession which was duly proved to have been made before the police, would have sufficed to have stopped the beating, and rendered it unnecessary for him to pay the 46 Rs. for that purpose, to the police; these Rs. being, as prisoner states, the sum which was said to be prosecutor's property found with him; while again the sum all but corresponds with that found concealed in his premises. His plea as to wounds from beating is futile, for the nature of them was not distinguishable at the trial in the zillah. Prisoner No. 11, in no way proves her pleas in appeal. The proof of her *guilty knowledge* is to be considered. Her confession before the police admits it; but irrespective of that, the witnesses to the discovery of property by her, depose to her admission then of such guilty knowledge, i. e. to her saying prisoner No. 4, her son had made it over to her, *as obtained by dacoity*.

On the whole, we do not see sufficient grounds to admit the appeals of any of the prisoners, and reject them.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND SREEMOTEE AMEENAH

*versus*

BUDDERUDDIN (No. 1,) BELAT ALLI (No. 2,) AKOO (No. 3,) AND AZIM CHUPPRASSY (No. 4.)

Tipperah.

1857.

CRIME CHARGED.—Nos. 1 to 3, wilful murder of Ameeruddin, No. 4, accomplice in the above crime.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 19th December, 1856.

March 1.

Case of

BUDDER-  
UDDIN  
and others.

*Remarks by the sessions judge.*—The deceased discovered a fish-trap set on his premises, and attempted to take possession of it. He was opposed by the prisoners and angry words ensued. Budderuddin (No. 1,) to whom the trap belonged, seized the deceased by the throat, Belat Alli (No. 2,) the son of Budderuddin (No. 1,) a lad of certainly not more than fourteen years of age, though described in the calendar as being two years older, struck him with his fist, Akoo (No. 3,) held him round the waist and Azim Chupprassy (No. 4,) directed the assault. Such was the statement of the prosecutrix, the wife of the deceased, who added that her husband died on the third day after the assault, having been intermediately unable to take sustenance or to converse.

One prisoner convicted of aggravated culpable homicide, but proposed sentence reduced; and another released from longer imprisonment on account of his youth and the lightness of the blows inflicted by him on deceased.

The prisoners pleaded *not guilty*.

The facts elicited from the witnesses, named in the margin\*

- \* Eyo-witnesses,
- No. 1, Mahomed Khamil Khulleefah.
- " 2, Nizamuddin.
- " 3, Reazuddin.
- " 4, Ameeruddin.

were, that, being near neighbours of the parties implicated in the case, they were present when the deceased was assaulted by the prisoners. I gather from the

evidence that the assault proceeded thus. Budderuddin (No. 1,) seized the deceased by the throat, and only relinquished his grasp when compelled to do so by the deceased biting his finger, the boy Belat Alli (No. 2,) striking the deceased two blows with his fist. Azim Chupprassy (No. 4,) who was standing by, *then*, and not before, gave the order to beat the deceased, when his son Akoo (No. 3,) seized the latter round the waist, and Budderuddin (No. 1,) struck him twice or thrice with a *lattee*, and apparently injured his right hand, the thumb of which was found after death to be dislocated at the first joint.

The native doctor's evidence was to the following effect;



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The wrist of the right arm, the chest, and the neck were swollen. Those parts were therefore opened and a quantity of clotted blood was found within each of the wounds, which appeared to have been caused by blows inflicted apparently with a stick. The joint of the thumb of the right hand was dislocated. Blood was also found in a congealed state on either side of the upper part of the thorax, and this latter injury appears to have been caused by extreme pressure of the fingers. Inflammation of the throat was the consequence, and death was attributable to starvation, (the deceased having been speechless of course) in consequence of inability to take nourishment.

The prisoner Budderuddin (No. 1,) stated in his defence that the deceased was subject to a malady of the throat to which, and not to any violence, his death was attributable.

Belat Alli (prisoner No. 2,) stated that he knew nothing about the quarrel.

The prisoner Akoo (No. 3,) stated that he also knew nothing of the dispute or its consequences.

The prisoner Azim Chupprassy's (No. 4's,) defence was to a similar effect.

None of the prisoners called witnesses to establish their defence.

The Mahomedan law officer found the prisoner Budderuddin (No. 1,) guilty of the culpable homicide of the deceased; the prisoner Belat Alli (No. 2,) of assault; and the prisoners Akoo (No. 3,) and Azim Chupprassy (No. 4,) of aiding and abetting in the culpable homicide of the deceased.

This is a case in which, with reference to my view of the prisoner Budderuddin's (No. 1's,) guilt, I am incompetent to pass sentence. The extreme violence with which he appears to have grasped the throat of the deceased, whom he released only when his own finger was bitten, was such as to send the latter home a dying man in fact, for although he survived for three days it was in a state of great suffering, and, as regards ultimate recovery, of apparent hopelessness. He could neither speak nor take food, the throat being injured to such an extent as to deprive it of the power of performing its usual functions. Although an elderly man, the prisoner Budderuddin (No. 1,) is evidently in possession of considerable muscular powers, and these he appears to have used in a very merciless manner. I do not suppose that an intention actually to kill the deceased existed, but kill him the prisoner undoubtedly did by excessive violence, and that, too, under circumstances which render him doubly the aggressor, for he had no right whatever to set a fish-trap on grounds which belonged to the deceased, with whom there is reason to believe he had previously had a dispute arising from the same cause.

The guilt of the remaining three prisoners is comparatively

very light. Belat Alli (No. 2,) is a mere child, two blows from whose hand could have done the deceased no material injury whatever. He is also the prisoner Budderuddin's (No. 1's,) son, and may be supposed to have acted on the example, and under the influence, of his father. Bearing in mind the contaminating effects of a residence, however brief in a zillah jail, I hesitate to recommend any sentence in this boy's case. The period during which he has been in *hajat* awaiting this trial and the warning he will derive from his father's conviction and punishment, will, I think, suffice as a caution to himself for the future.

The cases of the remaining prisoners Akoo (No. 3,) and Azim Chupprassy (No. 4,) may be summed up together. The interference of both took place after the deceased was released from the prisoner Budderuddin's (No. 1's,) grasp, to the consequences of which alone death is attributable, when doubtless in obedience to Azim Chupprassy's (prisoner No. 4's,) order his son the prisoner Akoo (No. 3,) seized the deceased round the waist. Beyond acting to this extent neither was guilty of any serious violence towards the deceased, but both are related to the prisoner Budderuddin (No. 1,) and acted very improperly in taking up his cause in the manner they did.

Under the above view of the case, I would convict the prisoner Budderuddin (No. 1,) of aggravated culpable homicide, and recommend his being sentenced to fourteen years' imprisonment with labor in irons. The three remaining prisoners I would convict of assault. In the boy Belat Alli's (No. 2's,) case I have already suggested the course I would pursue. In the instance of the prisoners Akoo (No. 3,) and Azim Chupprassy (No. 4,) I think that six months' imprisonment with a fine of 20 rupees in lieu of labor would be a sufficient penalty.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court, having perused the record, concur with the sessions judge in his opinion of the guilt of the prisoners; but the Court do not consider the circumstances under which the homicide was committed of so aggravated a nature as to call for the enhanced punishment on the prisoner Budderuddin, (No. 1,) proposed by the sessions judge, for there was a mutual struggle, but no distinct malicious attack with a view to take life.

The Court therefore sentence him prisoner No. 1, Budderuddin, to be imprisoned with labor and irons for seven years. And though it be no palliation of the guilt of the prisoner, Belat Alli, that he was acting under the direction of his father, Budderuddin, the Court, taking into consideration his youth and the fact that the blows he inflicted were comparatively light, and thinking the detention he has undergone while under trial a sufficient punishment, are disposed to attend to the sessions judge's

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1857. recommendation of mercy, and direct him to be discharged.  
 The sessions judge will pass orders on the other prisoners as  
 March 1. proposed by him.  
 Case of  
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 and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

### GOVERNMENT AND CHOONEE MUHTOON

*versus*

BHAUGULPORE. BOUR ROY (No. 1, APPELLANT,) JUNGUL ROY (No. 2, APPELLANT,) SHOOMEREE ROY (No. 3,) PULUT ROY (No. 4, APPELLANT,) BUNDHOO ROY (No. 5,\*) AND MUDUN ROY (No. 6.\*)

1857. CRIME CHARGED.—Prisoners Nos. 1, 2, 3 and 4, 1st count,

March 2. dacoity and plunder of property valued at Rs. 34-7-9, in the house of Choonee Muhtoon; 2nd count, receiving and possessing plundered property, knowing at the time of receiving it that it had been obtained by dacoity and plunder. Prisoner No. 5, dacoity and plunder of property to the above value. Prisoner No. 6, receiving and possessing plundered property knowing at the time of receiving it that it had been obtained by dacoity and plunder.

One prisoner convicted; the evidence in regard to him being sufficient. The other prisoners released owing to the unsatisfactory manner in which the Police proceedings were conducted in regard to the finding of the property. Remarks on the subject.

CRIME ESTABLISHED.—Prisoner No. 1, 1st count, dacoity and plunder of property valued at Rs. 34-7-9, in the house of Choonee Muhtoon; 2nd count, receiving and possessing plundered property knowing at the time of receiving it that it had been obtained by dacoity. Prisoners Nos. 2, 3 and 4, receiving and possessing plundered property knowing at the time of receiving it that it had been obtained by dacoity and plunder.

Committing Officer.—Mr. A. E. Russell, magistrate of Bhaugulpore.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 8th September, 1856.

Remarks by the officiating sessions judge.—This case was tried at Bhaugulpore, under the provisions of Act XXIV. of 1843, on the 6th and 8th September, 1856.

The prisoners pleaded *not guilty*.

The prosecutor represents, that about twenty men came to his house on the night of the 25th May last, five or six of them called out to him for a light, he told them he had none, and recommended their going to a cow-shed some little distance off, where they probably would procure some fire. Shortly after

\* Acquitted by the lower court.

this, the whole body of dacoits entered his premises, they tied him, and his son, the former with the cloth he wore, and the latter, with a rope, and after lighting *mussals*, rifled the house of its contents, which consisted principally of grain, implements of husbandry, cooking utensils, ornaments, &c., valued at Rupees 34-7-9. While the men were engaged in committing the dacoity, the prosecutor and his son, loosened their fastening and effected their escape by breaking open the compound enclosure, which was made of wicker work, prosecutor ran to an adjoining *tolah* and informed the residents of what had occurred. On this, witnesses Nos. 2 and 6 accompanied him home, by this time the dacoits had decamped. At the door they found Soburun Roy, the herdman, of him they inquired in which direction the dacoits had gone, he told them towards the north-east. Witnesses and prosecutor then examined the premises, and found that his granaries were empty and all his other property missing. It being a dark night, ~~none of the dacoits were identified,~~ as the party waited until the morning, when prosecutor and witnesses Nos. 1, 2 and 11, followed them up to two villages, named Runguneah Tan and Beltikree, they were traced by the grain being strewed all along the road for two *coss*. As the track was not discernible beyond the latter village which comprises two "*tolahs*," the party, without disturbing the residents, returned, and the prosecutor informed the zemindar who directed him to lodge a complaint at the police. Nunkee Chowkeedar witness No. 11, proceeded to the Bownsee thannah, prosecutor from indisposition could not accompany him. The mohurrir with some burkundazes repaired to the spot, and after taking the *sooruthal*, went with the prosecutor and the rest of the party to Runguneah Tan (a small *tolah* which is on the road to Beltikree) here the houses of four persons were searched but no property was discovered. They then went to Beltikree and searched the houses of several persons, when various articles ~~of the stolen property were found in prisoners Nos. 1, 2, 3 and 4's houses which were claimed by the prosecutor and identified by the witnesses.~~ The mohurrir, witness No. 5, deposed that he ascertained from a boy Shunker Roy, and a girl Gundeah, aged twelve and seven years, that prisoner No. 5, had also brought some property, and hid it in a water-course, but they could not state where they got it from. These men resided at another *tolah*, named Choonah Kotie. The former individual's house was searched, but nothing was found, he was then ordered to hunt in the water-course, but the property could not be discovered, and on his defence being taken, he is said to have stated to the police, that he gave his share of the property to prisoner No. 6, to keep. Subsequently he was apprehended, and ordered to search for the concealed property (*tolah* and *thalee*) which he took out of the water. These articles the prosecutor

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claimed and this circumstance led to both the men being sent in to the magistrate, who considered it advisable to commit them. The boy Shunker Roy, merely stated before the police, that he had *heard* that Bunde Roy, Narayn Singh and others had brought some property, but he could not state from whence they obtained it. The police mohurrir considered this sufficient clue to apprehend several prisoners, who were acquitted by the magistrate, the magistrate moreover summoned the girl, and merely asked her one question about the property, to which she gave an indefinite reply, and for this reason, I presume, she was not named as a witness in the calendar. The circumstances connected with the finding of the property in the water-course being somewhat suspicious, as also the manner in which the information regarding it was obtained, I could place no reliance in this part of the proceedings especially as no trace of grain was to be found beyond Beltikree, and considering prisoners Nos. 5 and 6, ~~innocent, they ought to be acquitted~~; but as regards the other prisoners, setting aside their confessions before the police; prisoner No. 1 confessed to the dacoity before the magistrate, and to having received as his portion of the booty some grain and various articles which have been identified. As prosecutor's property were found in the houses of prisoners Nos. 2, 3 and 4, which they merely state belong to them, unsupported by any evidence, I am therefore of opinion, that they are guilty of the second count, and No. 1, prisoner, of first and second counts, and sentence them accordingly, while prisoners Nos. 5 and 6, were acquitted.

*Sentence passed by the lower court.*—Each to ten years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners Nos. 1, 2 and 4, have appealed, but have urged no special pleas.

Bour Roy, prisoner No. 1 confessed before the police and magistrate; and, on the trial before the sessions judge, when called upon for his defence, he stated that he had confessed to the magistrate, and did not wish to call witnesses.

Certain property, viz. No. 3, a bag containing *junaira*; No. 39, a bag containing mustard seed; and No. 40, a bag containing eight seers of rice, were found and identified by the prosecutor and his witnesses. It is but just possible only that such articles can be identified; still articles Nos. 39 and 40 were pointed out by the prisoner's wife, the one from his house, the other concealed in the neighbouring jungles, and said by her to have been put there by the prisoner. We therefore do not see any ground for interfering with the conviction of this prisoner on his repeated confessions. He has not complained of ill-treatment in the mofussil; nor is any apparent on the record, though great delay took place in his examination after his apprehension.

Prisoners, Nos. 2 and 4, confessed to the police, but denied the charge before the magistrate. They were apprehended on the 29th of May, and were not examined by the police mohurrir till 3rd June, and were not forwarded to the magistrate till the night of the 4th June. No sufficient reason was assigned for this; yet neither the sessions judge nor the magistrate have taken suitable notice of this misconduct of the police mohurrir. Under such circumstances little reliance can be placed on the fact of the discovery and identification of the plundered property. Indeed both the judge and magistrate have thought the same evidence insufficient to convict other parties sent in by the police, with whom property, very similar to that found on these prisoners, was discovered.

Jungul Roy prisoner No. 2's house was searched on 29th May; and a *koodal* found, which the prosecutor and his witnesses identified. On 3rd June, the prisoner was *examined* and confessed, and on the 4th the police mohurrir writes at the close of the "*khana talashi farhad*" (list of property as found on searching the premises) that Jungul Roy produced a sword to the burkundaze, in whose charge he was; and said it was part of the plundered property; and at the same time Pullut Roy prisoner No. 4 produced a *thali* as part of prosecutor's goods. The prosecutor identified the sword, and not the *thali*; but from what place these articles were produced does not appear, and the evidence of the witnesses on this point is contradictory; some saying that the prisoner produced the sword from the jungle, others that it was found in his house. Nor does it appear that the sword was stated to be identified by any peculiar marks. The prisoner claims the *koodal* as his own, but has not brought witnesses to prove his claim.

Pullut Roy's house was searched on 29th May; and a bag containing *junaira* No. 12, found, and identified by the prosecutor. On 1st June his house was *again* searched, and articles No. 34, a brass *keea* (claimed by prisoner as his own property) and No. 35 a bundle of thread, were discovered. Further in the neighbouring jungles, but at what distance from his house, and on whose information, does not appear, were found articles No. 36, a pot containing mustard seed; No. 37, a bag containing ditto; No. 39, a bag containing *junaira*, all of which articles were identified by the prosecutor, and his witnesses; and on 4th June, after the prisoner had been examined, and confessed on, 3rd, he produced a *thali*, as part of the plundered property, but it was *not* claimed by the prosecutor.

The facts of the grain being dropped along the road, and the footsteps of the robbers being traced the next morning from the prosecutor's house to Beltikree, two or three *coss*, and no further, may be *primd facie* evidence that the Beltikree villagers were concerned in the robbery; and the concealment of the grain in the

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jungle adjoining the village supports this view ; but there is no proof against prisoner No. 4 that he concealed any grain in the jungle ; and the police mohurrir, when taking his confession, has not asked a single question on the subject. As regards the search for and identification of the property, it must be observed that the list of the plundered property is said to have been given to the police mohurrir on 28th May, but was not forwarded to the magistrate till 4th June, with the prosecutor's deposition ; i. e. after the search had been made, the property found and identified, and the prisoners' confessions taken. There is, therefore, far from the proper security that the list filed with the record is a bonâ fide list ; especially when considered in connection with the other irregularities in the police proceedings before noticed.

We observe that ten men who had confessed in the mofussil, and with some of whom property consisting of *koodals*, *hookah*, *thali*, *lota*, in addition to grain, was found, were sent in by the police ; and though the whole of the above property was identified by the prosecutor and his witnesses, five of those so sent in were released, and five others, together with Mudun prisoner No. 6, were committed to the sessions. We further observe that of the parties committed for trial, though the prosecutor and his witnesses deposed to prisoners Nos. 5 and 6 having produced the *thali* and *lota*, recognized as prosecutor's, concealed in the water of a *bund* close to Beltikree, and though prisoner No. 5 admitted the articles to be part of the stolen property, and that he had put them there at the request of prisoner No. 6, the judge thought the evidence against these prisoners insufficient, and acquitted them.

Under all the circumstances of the case stated above, the evidence, as regards the discovery of the property with the prisoners Nos. 2 and 4, and its identification by the prosecutor and his witnesses, is, in our opinion, so unsatisfactory, as to be insufficient for their conviction, and we order them to be released.

We think it right to record that the police proceedings have been conducted with, to say the least, culpable irregularity ; and we desire that the sessions judge may bring the case to the notice of the Superintendent of the police. The Court would add that if investigations in the mofussil could, in heinous offences be conducted by, or under the immediate superintendence of officers of the class of deputy magistrate, who could certify to no malpractices having taken place during enquiries there, the Court would not be so often embarrassed with the difficulties apparent in this and other cases, in regard to the original proceedings in the mofussil.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND NEEDHEE TEWAREE

*versus*

HUREE BEHRAH.

Midnapore.

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Case of

HUREE  
BEHRAH.

Appeal re-  
jected; the  
plea in appeal  
being quite  
insufficient  
against the  
evidence on  
the record.

CRIME CHARGED.—1st count, an attempt to kill in having with a view to rob him of his property, administered certain drugs to the prosecutor, Needhee Tewaree; 2nd count, with having stolen property and cash to the value of Rs. 505-15 ans. belonging to the prosecutor, by making him insensible by administering to him deleterious drugs.

CRIME ESTABLISHED.—Theft by administering a deleterious and intoxicating drug to the prosecutor in furtherance of that object.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 22nd October, 1856.

*Remarks by the officiating sessions judge.*—The prisoner pleads “*not guilty*,” but urges nothing in defence. The two witnesses to character, whom he cited, were not to be found at the place indicated by him.

It is in evidence that the prosecutor, prisoner and fifteen others, left Calcutta for Cuttack on the 4th September last. Needhee Tewaree, the prosecutor, has for twenty years gained his livelihood by carrying money remitted by Ooriah bearers in Calcutta to their families. He deposes that on this occasion he was entrusted with Rs. 493, in cash and some clothes, the contributions of some ninety-three persons with the above object; and that the prisoner was aware he had this money, &c. before they left Calcutta.

The party reached Kolah bazar, on the evening of the following day, when they lodged at one Sadhooree Bustomee’s, in a house set apart for travellers. The prosecutor cooked the dinner and the prisoner rubbed in the turmeric into the fish. All the aforesaid travellers partook of the meal, excepting the prisoner, who excused himself on the plea that some “*koomra*” gourd, which always made him ill, had been mixed with it. Not long after this, symptoms of intoxication and insensibility were experienced by them and they lay down for the night.

The next morning, it was discovered that the prosecutor’s bundle had been removed from its place, and the money and some cloths abstracted. An enquiry was held by the police which resulted in the prisoner’s confessing that he had at the



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instigation of three other men, whom he named, rubbed up a deleterious and intoxicating powder with the turmeric; that while prosecutor and his fellow-travellers were under its influence, two of his companions in guilt came into the lodging-house; that he pointed out the prosecutor's bundle to them, and that from it they took the money, &c. and went off to Calcutta.

It is in evidence that three men, one of whom the prisoner admitted to be his uncle, joined the party on their way to Kolah, and lodged in a separate house hard by, but that they had disappeared in the morning.

The prisoner repeated his confession before the deputy magistrate of Tumlook. On his person 10 Rs. were found, 8 of which he had received from some of the party on the pretence of satisfying the police and the remaining 2 Rs. appear to have been taken from a separate purse of the prosecutor the morning after the theft. A seed of the *nux vomica* was also found, but it was then entire.

There is no reason to doubt the truth of these confessions they are duly verified and proved to have been voluntary. They are also corroborated by the circumstantial evidence.

The *futwa* declares the prisoner to be liable to *acoobut*, concurring in which, I convict the prisoner of theft by administering a deleterious and intoxicating drug to the prosecutor in furtherance of that object, and sentence him as below.

*Sentence passed by the lower court.*—Seven years and two years more in lieu of corporal punishment, total nine years' imprisonment with labor and irons and to pay a fine of Rs. 503-15 annas under Act XVI. of 1850.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner's appeal consists of the following pleas only *i. e.* that the lower courts have decided the case unsatisfactorily; that he knows nothing of the crimes with which he is charged, and that a reference should be made to the record.

We have perused the record, and find that the prisoner duly and voluntarily confessed both to the police and to the deputy magistrate of Tumlook; that these confessions are corroborated by direct evidence to the prisoner having rubbed together the turmeric and fish; to his refusing to join the meal; to all who partook of it having been affected with more or less of insensibility in consequence; to the loss of the property by prosecutor in that state, and to prisoner occupying at the time the same lodging as prosecutor. The seed of the *nux vomica* is also shewn by the statement of the civil surgeon to have been found with prisoner.

We reject the appeal.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

JUGGOO DEY.

Midnapore.

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Case of  
JUGGOO  
DEY.

CRIME CHARGED.—1st count, dacoity on 22nd March, 1833, in the house of Juggoo Seet, inhabitant of Teecona Patna, thannah Sagressur; 2nd count, dacoity on 12th April, 1845, in the house of Ramkisto Mahitee son of Narayun Koyal, inhabitant of Khirkee, thannah Nema; 3rd count, dacoity on 23rd January, 1847, in the house of Purekhit Sao Kamelah, inhabitant of Rayedah, thannah Nagua; 4th count, being by profession a sirdar dacoit and having belonged to a gang of dacoits.

Prisoner convicted, and sentenced under Act XXIV. of 1843, on his own voluntary confessions, supported by independent evidence.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent, assistant dacoity commissioner and joint-magistrate of Midnapore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 6th December, 1856.

*Remarks by the additional sessions judge.*—The prisoner confessed before the joint-magistrate to thirteen dacoities, as

- \* No. 1, Khirkee.
- „ 2, Talgachar (or Teecona.)
- „ 3, Rydar.
- „ 4, Meer Godar.
- „ 5, Aydar, 2nd case.
- „ 6, Belbunnee.
- „ 7, Kooder.
- „ 8, Doorpul.
- „ 9, Hooghly.
- „ 10, Poorunda.
- „ 11, Gôt Showur.
- „ 12, Barabetia.
- „ 13, Oopla Hat.

per margin. He is charged with three\* of these in this calendar, which he again admits having joined in committing. He also admits he was himself a leader of dacoits, and a dacoit by profession.

The Talgachar or Teecona dacoity, took place as far back as the 22nd March, 1833. It was reported the next day, and one Oojoo Doss who was arrested in

the case confessed to it on the 25th March, 1833, and named the prisoner as an accomplice. Oojoo Doss had himself been recognised at the time by the owner of the premises, Juggoo Seet.

Lukun Jana witness No. 3, swears the prisoner was engaged with him in the Khirkee dacoity No. 1, of the list above given. This dacoity which took place on the 12th April, 1845, was reported the next day, and enquired into by the police, and a person of the name of Narain Bearer who was arrested in it, confessed on the 22nd of the same month to the police; and

1857. compromised in his confession, both the prisoner and the witness Lukun.

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Case of  
JUGGOO  
DEY.

I convict the prisoner of having belonged to a gang of dacoits, and recommend his imprisonment for life with hard labor in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has confessed before the committing officer and sessions judge. The records of the specific dacoities charged and the evidence of Lukun Jana, witness No. 3, corroborate the confessions. We observe that the committing officer certifies: "The prisoner was kept away from the other approvers under a separate guard from the day of his arrest until that of his commitment." We concur in the conviction; and sentence prisoner to be transported for life under Act XXIV. of 1843.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND HAROO MUHATO

*versus*

SUDDUN PATUR (No. 3,) LUKHUN KOMAR (No. 4,) DOOKHOO TANTEE (No. 5,) UNUNO PATUR (No. 6,) CHURN SINGH (No. 7,) AND MUNGUL SAIHOO (No. 8.)

Midnapore.

1857.

March 4.

Case of  
SUDDUN  
PATUR and  
others.

**CRIME CHARGED.**—Dacoity with wounding in having on the night of the 15th June, 1856, corresponding with the 4th Assar, 1263, entered the house of the prosecutor Haroo Muhato, plundered therefrom property to the value of Rs. 70-10, and whilst retreating after the dacoity, wounded witnesses Nos. 1 and 2, with blows of a sword and other instruments.

**CRIME ESTABLISHED.**—Dacoity with wounding.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Appeal rejected; the confessions of the prisoners being fully corroborated. Rewards Chowkedars.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 2nd October, 1856.

*Remarks by the officiating sessions judge.*—The prisoners plead *not guilty*, they state in defence that they were at their homes when the dacoity charged against them took place; and Suddun Patur, further urges that Rajah Shamsoundur Mal, to whom the police jurisdiction of thannah Jhargaon is entrusted, bears him enmity. The circumstances of the case are as follows. On the night of the 15th June last, corresponding with the 4th Assar, 1263, Umlee, dacoits attacked the house of one Haroo

Muhato of Bunpoora, in thannah Jhargaon, on which the owner rushed out by breaking through the reed and plaster wall of it, and rousing a few of his neighbours returned with them towards the house. They were scared off by the dacoits, when they ran to the adjoining village of Grijja Seemul for assistance. There they met Goverdhun Sirdar, witness No. 2, and Beedoo Patur, witness No. 1, going their rounds, who immediately proceeded to the scene of the occurrence, opposed the dacoits, who attacked them and wounded two or three, when all fled but one man; he stood his ground, but was cut down and captured. This man at the time gave his name as Kakha Bhatooree of Pathooree Peetul Khatee. Information was immediately transmitted to the thannah, and the wounded prisoner conveyed there in a *doolie* the next day.

He then and there confessed to the dacoity, naming as his accomplices Cheedam Tantee, two Komars, Anundo Bakhooree and Dookhun Tantee. He concludes his confession by saying he had made a mistake in mentioning the name of Cheedam, that it was Suddun Tantee, the brother of Modon of Beerjhara, whom he intended to name. Suddun Patur Tantee was then arrested and on the 18th June, confessed his guilt, mentioning as his accomplices Khoosa Koomar, Lukhun Koomar, Arundo Tantee, Kurrun Singh, who was wounded and captured; so he designates Kokha Bhatooree, adding that the said Kurrun Singh *alias* Kokha was a resident of Chuttree and not of Patharee. A sword which was found in Suddun's house, he admitted belonged to himself. Dookhoo Tantee, Anundo Patur Tantee, Churn Singh Tantee, Mungul Sahoo and Lukhun Komar were afterwards arrested, and confessed the crime in the *mofussil* mutually implicating one or more of the prisoners at the bar as their companions in guilt.

Before the magistrate, on the 18th June, Kokha Tantee *alias* Kurrun Singh *alias* Gudhe Tantee inhabitant of Chuttree and Patooree, shown by witnesses No. 42, Goora Muhato, No. 43, Haradhun Muhato, No. 44, Suttroghun Lapit, No. 46, Purub Muhato and No. 47, Lukeeram Dhoba, of the defence to be the father of Sohun Tantee of Chittree confessed to having committed a dacoity in the house of Kungalee Dhungor meaning no doubt the witness No. 5, Kungloo Muhato, a relation of the prosecutor, and an inmate of his house. He then mentions as his accomplices Suddun Tantee, two Komars, Anundo Bhatooree and Dookhun Tantee; that they consulted about the dacoity at the house of Suddun, the brother of Modon (this relationship is proved by the witnesses for the defence) that Dookhun was armed with a sword, Suddun Patur, prisoner No. 3, denied the charge in the magistrate's court, Dookhoo prisoner No. 5, Anundo Patur, No. 6, Churn Sing, No. 7, and Lukhun No. 4, though they deny having committed the dacoity, admit that they were

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aware it was contemplated, and say enough to warrant the presumption that they had previously confessed to it.

Churn Singh, prisoner No. 7, in addition states, that he went some distance with the party.

Mungul Sahoo Tantee, prisoner No. 8, fully confesses his participation in the crime in the magistrate's court, and names Churn, Anundo, Lukhun, two Komars, a Badhooree or Bathooree, Suddun and Gadhee Tantee, who was severely wounded. He names Suddun Patur, as the Sirdar, and that a Koomar had an arrow, which was shot. The property plundered is valued at a trifle more than Rs. 70, sixty of which were in cash; and only a *lota* and an earthen *bhar* found near the captured dacoit, have been recovered.

The chowkeedar was struck slightly on the head with an arrow and received the blow of a club on his cheek; but neither he nor the Sirdar was materially hurt.

The defence has totally broken down, not a witness makes even a pretence of supporting it, except Phoolmonee, the sister of Lukhun Komar, prisoner No. 4.

The captured dacoit died of his wounds in the jail hospital on the 8th July, 1856. The evidence against the prisoners Nos. 3, 4, 5, 6, 7 and 8, consists merely of their own confessions before the police and the suspicious circumstances under which Nos. 5, 6, 7 and 8, were apprehended. That evidence is supported in a measure as regards prisoners Nos. 4, 5, 6 and 7, by their admission before the magistrate that they knew a dacoity was contemplated, and as regards Churn Singh prisoner No. 7, by his allowing that he had accompanied the dacoits a certain distance. Mungul Sahoo prisoner No. 8, distinctly confesses before the magistrate his participation in the crime. These confessions are proved to have been voluntarily made, are consistent one with the other and bear internal marks of truthfulness, I therefore convict the prisoners of dacoity with wounding and sentence each of them to ten (10) years' imprisonment with labor in irons.

It is incumbent on me to bring prominently to notice the conduct of Goburdhun Sirdar and Beeda Chowkeedar, who evinced a determination and courage, not often shewn by the police, in attacking the robbers and capturing one of them. Their exemplary conduct is well deserving of marked notice by the police authorities.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The grounds of appeal set forth by appellants, are

I.—That no property was found upon them.

II.—That the charge has been falsely made from the enmity of the *Thaja* of Jhargoon, who manages the police in his own estate.

III.—That the sessions judge's order will be found to be unjust, on a reference to the record.

The evidence against the prisoners is that at the dacoity Bedoo and Goverdhun, chowkeedars of the adjoining village, came up and attacked the dacoits, one of whom, Kokha Tantee, was left badly wounded, and was captured on the spot. He confessed before the police and the magistrate; but died before the trial at the sessions came on. His confession, implicated prisoners Nos. 3, 5 and 6 and two Komars, as his accomplices. Prisoner No. 3 confessed to the police, and named Kokha, and prisoner Nos. 4, 6 and 7 as accomplices. Prisoners Nos. 4, 5, 6, 7 and 8 also confessed to the police. Prisoner No. 3 denied the charge in the magistrate's court, but prisoners Nos. 4, 5, 6 and 7 there admitted being aware of the dacoity being about to take place, and prisoner No. 7 to having gone part of the way to it. Prisoner No. 8 confessed fully before the magistrate, implicating prisoners Nos. 3, 5, 6, 7 and Kokha (deceased); the last, under the *alias* of Gadda Tantee. He does not mention prisoner No. 4 by name, as stated by the judge. The defence of the prisoners in the sessions entirely failed; although the witnesses called were chiefly their relatives and friends.

The statements in the confessions of Kokha deceased and Mungul, prisoner No. 8, taken before the magistrate, strongly tally with the circumstances of the case as shewn by independent evidence for the prosecution, viz. as to the number of dacoits, and the number who went into the house, their arms, the light they used, (being a portion of the thatch-straw fired,) the identification of the *lota* and *ghee* vessel found with Kokha, the identification of the *gumcha* of prisoner No. 5 found on the spot; and the account of the arrow-shot given by the prisoner No. 8, and by the chowkeedars respectively, and by the fact of the arrow being found on the spot.

Looking at these circumstances so strongly corroborative of the confessions of Kokha and Mungul Singh; to the evidence to these confessions, and those at the police being voluntary throughout; to the clear and consistent manner in which the evidence for the prosecution has been given, and to the failure of prisoner to substantiate any defence, we do not think it necessary to interfere with the sentence; and we reject the appeal.

We observe that the necessary orders have been given by the judge in the English department in regard to the steps to be taken as to rewards to Bedoo and Goverdhun. We quite con-

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SUDDUN  
PATTE and  
others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

KAIM KHAN.

Tipperah.

1857.

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Case of  
KAIM KHAN.

CRIME CHARGED.—Affray in which Sona Gazi was killed and Rohamut and Brijolall wounded.

CRIME ESTABLISHED.—Affray attended with the culpable homicide of Sona Gazi and wounding of Rohamut and Brijolall.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Appeal re-  
jected; the  
pleas being in-  
sufficient to  
warrant inter-  
ference with  
the orders of  
the lower  
court.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 1st September, 1856.

*Remarks by the sessions judge.*—This trial is supplemental to one held by me on the 29th February, 1856, and reported in my monthly abstract of convictions without reference to the Sudder Court in the following terms. A second trial, I should, however, observe, connected with the same charges was referred by me in April last. In both instances the Sudder Court were pleased to uphold my conviction of the prisoners, the date of the orders confirming the sentences of this court being the 19th July last.

“Ameena Beebee and Kaim Khan are proprietors of two independent or *kharijah* talooks in Kismut Sutrokhundul, Pergunnah Seryle, a very turbulent part of the district. Kaim Khan appears to have attached and cut the crops of a ryot on Ameena Beebee's estate, named Emambuxsh, but to have effected the attachment in the names of a suppositious under-farmer Mohurum (in reality only a reject,) and of a fictitious defaulter named Ameer. In reprisal Assadoollah who is Ameena Beebee's Naib and chief man of business, attached the crops of a ryot on Kaim Khan's estate named Sadoollah, setting up, as Kaim Khan had done before him, a fictitious claimant and defaulter. In proceeding to carry out this attachment by cutting and removing Sadoollah's crops, Assadoollah and the body of men who accompanied him (stated by the darogah to amount in number to two hundred, or two hundred and fifty but more probably to fifty or sixty) were met and opposed by Kaim Khan, who had summoned together an equal number of partisans by beat of drum. In the affray which ensued Sona Gazi a part-proprietor of Sadoollah's crop, was killed by a thrust with a *rai-bās*, and Brijolall and Rohamut (prisoners Nos. 23 and 14) were wound-

ed, the former losing his little finger; and Rohamut being slightly wounded in the side."

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"The case appears to have been taken up by the police in the first instance as one of riot confined to Assadoollah and his retainers, Kaim Khan having on the same day, laid an information to that effect sending in at the same time the corpse of Sona Gazi; Assadoollah who was apprehended on the 30th idem, gave on that day his version of the affair which converted the supposed riot into a case of mutual affray. On the following day, that is, on the 1st December, Kaim Khan presented a supplemental plaint making the parties, whom Assadoollah the day before had named as his witnesses, defendants, on the plea that he had forgotten them when making his first deposition."

"Assadoollah accounted to the darogah for his silence from the 25th to 30th by stating that Kaim Khan had kept him in close confinement during the intervening days. Before the magistrate he dropped this plea, but adopted it again in the sessions court. This inconsistency coupled with the absence of all proof of his having been under restraint, precludes acceptance of this mode of accounting for his silence. I believe the truth to be that he was fully conscious of the serious consequences to which the breach of the law committed under his orders had exposed him, and was not anxious to hasten them by making his appearance at the thannah a moment earlier than was necessary even to implicate his opponents."

"That the affray was a mutual one seems to me to admit of no doubt. The evidence for the prosecution is derived in four instances from witnesses of unusual respectability, three of whom are independent talookdars, and the fourth a merchant. Two of these witnesses appear to be distantly connected with Ameena Beebee, but their evidence showed no tendency whatever to lessen the criminality of her naib and ryots at the expense of their opponents. The remaining four witnesses, if of lower grade than those to whom I have alluded, deposed to what they saw and knew in a manner to impress me with a belief that they were speaking truly. Looking back to Peer Mahomed's first petition to the police, in which, as I have already remarked, the case was described as one of simple riot, I find the names of two witnesses Kalachand Lalla (No. 126) and Shib Dutt (No. 127) mentioned as qualified to prove the charge. Looking further into the record I find that these witnesses were examined by the magistrate, and that their depositions went clearly to show that the affray was two-sided."

"The wounded man, Brijololl Singh (prisoner No. 23), stated to the darogah and to the magistrate that he had been wounded by his employer Assadoollah (prisoner No. 24) for refusing to assault Sadoollah (prisoner No. 17) and others; Brijololl Singh



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(prisoner No. 23) appears to have been one of six *latials* employed by Assadoollah (prisoner No. 24) to aid him in this act of violence, and he was perhaps induced to make the statement of his having been wounded by his own master for refusing to be guilty of violence by the necessity of accounting for his wound (he had lost a finger) and at the same time if possible, of justifying himself. Before me he stated that he did not know who had wounded him, but had heard the next day that Kaim Khan's brother had done so."

"The medical officer deposed that Sona Gazi's death was attributable to a wound which had ruptured both the peritoneum and a portion of the intestines."

"The prisoners, who pleaded *not guilty*, made various defences such as, being near the spot and therefore implicated, though innocent in the charge or *alibi*. They called comparatively few of the numerous witnesses in attendance and in no instance supported the defence made to my satisfaction. Even in the evidence of these witnesses there is corroborative proof of a mutual affray having in fact occurred."

"Assadoollah (prisoner No. 24) was the leader of the one party, and Kaim Khan (who has hitherto evaded arrest) of the other. I cannot, on reflection, see much distinction between the guilt of the two parties. Kaim Khan had two days before committed precisely the aggression on Ameena Beebee's estate and ryots, which he collected his men by beat of drum to resent, when committed in retaliation on his own property. Both parties appear in fact to have been ripe for mutual aggression and both to be culpable to the same extent."

The prisoner on trial on the present occasion is Kaim Khan the leader of the one party, as Assadoollah, already convicted, was of the other. He had hitherto eluded apprehension and it was only after his failure to obtain at the presidency a reversal of this court's sentence on his ryots that he surrendered to take his own trial here.

He pleaded *not guilty*.

The evidence of the same witnesses to whom I alluded in my

No. 1, Allymuddeen.

„ 2, Sadir.

„ 3, Madhoo Myah.

„ 4, Azimooddeen *alias* Tokah Myah.

„ 5, Mozzoffur Ally.

„ 6, Abbas Ally.

„ 7, Kulleem Shah Fakcer.

„ 9, Kulleem Rajah Myah.

former abstract, as being of great respectability and therefore entitled to confidence, established the prisoner's leadership and active participation in the affray. It would have been no matter of wonder if at this lapse of time some slight discrepancies had crept

into their present evidence, but there are none in fact on any important or material point.

The prisoner, who conducted himself very noisily and persisted

in interrupting the witnesses for the prosecution without regard to the remonstrances or cautions of the court, called no evidence to support his defence which consisted mainly of a denial of having been concerned in the affray, on the day of the occurrence of which he was at the moonsiff of Nassirnugger's cutcherry.

The Mahomedan law officer found the prisoner guilty and pronounced him liable to *tazeer*.

Adverting to the sentence passed on Assadoollah the leader of the other party, between whose and the prisoner's guilt there appears a perfect equality, I sentenced the latter to seven years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner appeals on the ground that the prosecutor and witnesses, though they depose to his presence, do not do so as to his giving the order, or to his having struck any one; further that as he is a talookdar, a sentence of labor and irons is improper for him.

This case, regarding the other prisoners and this prisoner is stated in the same words by the sessions judge; both here, in his abstract statement, and in pages 85 to 92 Nizamut Adawlut Reports, July 19th, 1856. Appellant does not explicitly deny his complicity. It is, however, clear on the record that he did give orders to *remove* the alleged trespassers; and that the affray was by his ryots; and that he was present. Prisoner's defence was an *alibi*, of which there is no proof at all. We reject the appeal.

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March 4.

Case of  
KAIM KHAN.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND MUSSOODUN ROY

*versus*

Bhaugulpore. KHODABUX (No. 1,) AND UJODHEA SINGH (No. 2.)

1857.

March 5.

Case of

KHODABUX  
and another.

Two prisoners convicted ;  
but the second  
of privy only.  
Remarks on  
omission of record of *post mortem* examination.

CRIME CHARGED.—No. 1, wilful murder of Prem Roy, deceased ; No. 2, 1st count, being an accessory to the above before and after the fact, and 2nd count, privy.

CRIME ESTABLISHED.—No. 1, culpable homicide of Prem Roy, deceased and No. 2, being an accessory before and after the fact.

Committing Officer.—Mr. F. B. Drummond, joint-magistrate of Bhaugulpore.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore, on the 24th November, 1856.

*Remarks by the sessions judge.*—This case was tried with the aid of a jury\* on the 21st and 22nd and 24th November, 1856.

\* Lala Kallychurn.

Lala Delaram.

Lala Tekumlal.

The prisoners pleaded *not guilty*.

The prosecutor, on returning home from accompanying some Sowars and carrying their effects, found that the prisoners had forcibly taken away some milk from his house, his younger brother, deceased, sixteen years old, went out to remonstrate, there was an altercation, which terminated in the prisoner dragging deceased along with them. Prosecutor followed them to the blacksmith's shop of witness No. 8, here prisoner No. 1, requested the smith to make an instrument for his elephant, while prisoner No. 2, and the boy went on some little distance and remained in his custody, the latter tried to effect his escape by running off. Prisoner No. 2, cried out to his associate, that the boy was absconding. On this, prisoner No. 1, followed him, striking him as he went along on the back of the neck between the shoulders, until the boy by the violence of his blows fell into a river, the bank of which was deep and there were some stones at the bottom with little water, on these, he must have fallen for the eye-witnesses Nos. 1, 2 and 3, who saw the assault, declare that prisoner picked him up dead, and placed the corpse on the bank. Another witness No. 7, saw the young man being dragged by the prisoners when leaving the house, while other witnesses Nos. 9 and 10, saw the prosecutor crying on the road and enquired of him the cause, who told them "that the prisoners had killed his brother." The *post mortem* examination was conducted by the native doctor attached to the jail

during Dr. Farncombe's indisposition, when the body was somewhat decomposed, he made no record of it at that time, nor did he inform his immediate superior of the result. On the arrival of Dr. Farncombe's successor, he reported the circumstance to him, when he was ordered to prepare a statement of the inquest, this the native doctor dictated to a writer, who translated it, which was signed by the former being somewhat acquainted with English and eventually filed with the record. This report differs from the deposition regarding the injury done to the kidney, the former specifies that it was "bruised and blood found in the vicinity, which was the cause of death," in the latter, rupture of that organ is assigned as the cause, and as no external marks of injury were visible witness was requested to explain the cause of the rupture, for from the record it appeared, that deceased had received no blow in that region of the body, he declared the kidney might become ruptured by a person falling on some hard substance, the result would be instantaneous death.

The prisoners' defence before this court cannot be admitted for they differ from those made before the police, and magistrate, they moreover cite no witnesses, except No. 2, prisoner, who are absent, as will be seen by a letter No. 313,\* dated 10th November, 1856, from the sub-assistant commissioner, Santal Pergunnahs.

The jury find a verdict of culpable homicide against prisoner No. 1, and not guilty for prisoner No. 2. I do not concur in the innocence of the prisoner they wish to acquit, there is proof that he with his accomplice dragged the young man oppressively, and forcibly away for some illegal purpose, and while prisoner No. 1, was talking to the blacksmith, witness No. 8, the deceased remained in his custody, and he informed the other prisoner of his running off, if as he describes he was not concerned in the matter, he could have allowed the deceased to obtain his release, whereas he aids in the capture by informing prisoner No. 1, of his running away, which terminated in the catastrophe described, and although there is some discrepancy in the evidence, it is immaterial and does not affect the main points of the case, the prosecutor and his witnesses are poor

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\* From R. G. Plaits, Esq., sub-assistant commissioner S. P. in charge of current duties Deoghur division, to the magistrate of Bhaugulpore in letter No. 313, dated the 10th November, 1856.

In reply to your vernacular *rohukary* dated 6th November, 1856, requesting me to forward to the sessions court at Bhaugulpore, Furiag and Hyder Ally, witnesses for Ajodhes Singh, defendant, I have the honor to inform you that the witnesses abovementioned, being residents of Lucknow, have gone to their houses from the 42d Regiment, N. I.

The darogah's *kyfit* in original is herewith forwarded for your information.

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and another.

ignorant people, which may account for it, I therefore convict both prisoners No. 1, of culpable homicide and No. 2, of being an accessory before the fact and sentence them accordingly.

*Sentence passed by the lower court.*—No. 1, seven years' imprisonment with labor and irons, No. 2, five years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The record clearly shews that the prisoners had taken some milk from the house of the prosecutor without the price or payment having been settled. The deceased, brother of the prosecutor, followed and abused them; and the prisoners appear to have detained and obliged him to accompany them. One of the witnesses, Kulroo No. 3 states that the prisoners had each hold of the deceased's hands; but the other witnesses depose that the deceased was walking free between them, Adjudia Singh leading the way, followed by the deceased, and behind him the prisoner Khodah Buksh; that while Khodah Buksh stopped at Rajaram's, a blacksmith's shop, to order a *gourie* or goad, to be made, Adjudia Singh, prisoner No. 2 cried out that the deceased Prem Roy had run off; on which Khodah Buksh ran after him, and soon caught him; that he beat him about the neck with his fist, as he forced him along; and when they got to a *nullah* the deceased either directly from a blow or indirectly from losing his footing (which of the two is not clear) fell into the *nullah*, which was about waist-deep, and in which there was at the time about a cubit depth of water. The prisoner Khodah Buksh immediately got into the *nullah*, and took up the deceased, and placed him on the bank; but he was then dead. The witnesses state that the deceased met his death from the beating. One witness Dasoo No. 1, declares that Prem Roy was dead when thrown into the *nullah*; but this statement is contradicted by the evidence of the other witnesses, who state that when knocked into the *nullah* deceased was alive; but when taken out immediately after, he was dead. From the evidence of Golaum Ghous, native doctor, as to his *post mortem* examination, it would appear that the cause of deceased's death was the rupture of a kidney; but the direct evidence only proves that deceased was beaten with the fist about the neck and shoulders; and the rupture of the kidney is only to be accounted for by supposing that the deceased struck against the bank as he fell into the *nullah*; and so, or in some such manner, caused the rupture. It is stated by the prosecutor in his deposition to the darogah that the deceased was weak from continued fever and diarrhoea. Thus the rupture and its consequences may have been more readily caused. There is no evidence of more than beating with the fist about the neck by Khodah Buksh. We therefore think that a sentence of two years' imprisonment from the date of the close of the

sessions trial, with a fine of Rs. 50 in lieu of labor, payable within 15 days from the prisoner's receiving intimation of the order, sufficient punishment for the prisoner Khodah Buksh; and as it is distinctly deposed to by the witnesses that the prisoner Adjudia Singh did not strike the deceased, and it is not shewn that he instigated the striking by Khodah Buksh, but was only standing near the place where the boy fell into the *nullah*, we do not consider the first charge proved against this prisoner; but that he is only guilty of privity. We sentence him to six months' imprisonment with labor commutable to a fine of 50 Rs. payable in 15 days after intimation of this order.

We presume the magistrate has caused due notice to be taken in the proper quarter of the omission to record the *post mortem* examination, by Gholaum Ghous, native doctor.

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Case of  
KHODABUX  
and another.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND W. CARTER, Esq.

*versus*

NAIK KHAN (No. 3,) MIRCHYE KOORMI (No. 4,) PURIAG RAI (No. 5,) SHAMLAL RAI (No. 6,) AND RAMJEEAWUN (No. 7.)

Sarun

CRIME CHARGED.—Riot attended with the murder of Mahadeo Misser.

1857.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Mahadeo Misser.

March 5.

Committing Officer.—Mr. W. F. McDonell, magistrate of Sarun.

Case of  
NAIK KHAN  
and others.

Tried before Mr. H. Atherton, sessions judge of Sarun, on the 6th September, 1856.

*Remarks by the sessions judge.*—The deceased Mahadeo Misser, jemadar, was with others employed by the prosecutor, Mr. Carter, assistant of Messrs. Ward and Co, Railway contractors, in superintending the digging of *kankur* opposite the village of Mujanpoora to the west of Revilgunge near which Mr. Carter resided. The defendants were likewise engaged in procuring *kankur* at the same spot on account of Mr. Loughlin in the employment of the Railway Company itself. The parties were working in opposition. Neither held any pottah for the land and as was to be expected, they did not get on very well together. The day before the riot which took place on the 27th

Appeal re-  
jected; the  
evidence for  
the prosecu-  
tion being suf-  
ficient; and no  
pleas being  
substantiated  
to warrant in-  
terference with  
the order of  
the court be-  
low.

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and others.

June last, Mr. Loughlin, it appears, from the evidence for prosecution, went to the spot where the digging was going on, and told Mr. Carter's servant the deceased jemadar to desist working there, threatening him and his party if he did not. The jemadar mentioned what had happened to Mr. Carter in the evening and went off next morning with his people to his work. Shortly afterwards the defendants and others came up. The deceased and defendants came at once to words and the riot took place in which the jemadar was so severely beaten with *lattees* that he expired a few days afterwards, on the 2nd July, from the injuries received as shewn by the evidence of the civil surgeon. The prosecutor Mr. Carter some little time after, the jemadar went to his work, started himself with the view of speaking to Mr. Loughlin, who had written to tell him, his jemadar had collected people for an affray and on his way heard what had happened and met the prisoners Nos. 3 and 4 coming in the direction of Mr. Loughlin's residence near Revilgunge with the deceased jemadar's sword in the hands of Mirchye No. 4; Mr. Carter proceeded to the scene of the riot and on reaching the spot found the deceased in a hut with witness No. 2, and another witness No. 1, outside who had received slight injuries. The deceased was for a time senseless and never recovered sufficiently before his death to give a detailed account of what had taken place, or named those who had actually struck him. The magistrate considers that the defendants were the aggressors, and that no blame attached to the people on the prosecutor's side, but I do not think it clearly proved that the deceased was instantly attacked by the defendants, on their reaching the spot, and murdered without the least provocation. The jemadar and Mr. Loughlin's headmen appear to have come to words when after a short time the riot took place, the jemadar being overpowered before he had time to make good use of his sword, and in the riot and attack, it is proved by the evidence of witnesses Nos. 1, 2, 3, 4, 5 and 6 that the defendants took part. The witnesses on the part of the prosecution cannot be entirely relied on, but there is no reason to doubt that the defendants named by them were actually present and concerned in the attack. Badur Koormi, witness No. 1, lost the tip of a finger, and first of all said that Naik Khan had struck it off with his sword but this is incorrect, for none of the defendants had swords with them. Ramlall witness No. 2 was beaten and has a sword-scratch under the arm of which he does not give a satisfactory account. The defendants all plead *not guilty*. Naik Khan prisoner No. 3 says he was away to the west of the place where the attack took place, but his witnesses do not prove that he could not have returned and taken part in the outrage. Mirchye No. 4 gives a very straightforward answer and declares that a regular affray took place after the jemadar had first at-

tempted to prevent his people working and struck at him with his sword by which Ramlall was wounded. Badur Khan losing the tip of his finger in the scuffle, when he, Mirchye, got hold of the jemadar's sword. Mirchye has a scar in his hand, the blood on which attracted Mr. Carter's notice when he saw him on the road to Mr. Loughlin's and the scar may have been caused in the way explained by Mirchye, but allowing that it was he cannot be excused for the very active part taken by him in the riot. Puriag No. 5 admits having gone to the spot and found Mirchye and jemadar quarrelling, when he was assaulted by Mr. Carter's people. Shamlall No. 6 says he went to bathe and saw Mirchye coming with blood on his hand and his laborers following him, and that he knows nothing more of what took place. Ramjeeewun says he has been falsely accused through Beecaolall's (witness No. 5) one of Mr. Carter's people, desire to get his land. I find that a petition was in English presented to the magistrate on Ramjeeewun's part about the land, but there is nothing to show that Ramjeeewun had, previous to the riot, any quarrel with Beecaolall which could have led to his being falsely accused. The magistrate did not put Mr. Loughlin on his defence, but taking the view he did of the case he would have been justified in doing so. There is indeed much reason for suspecting that the attack was planned and that the defendants had orders to act as they did, but legal proof on this point is wanting. I do not think Mr. Carter's people could have gone with the intention of driving their opponents by force from the land on which they were working, for had such been their intention they would probably have killed some of them; Mr. Carter, however, was so far to blame that he permitted his jemadar and other people to go to the place after the threatening which had been given the previous day. He should have informed the magistrate of what his jemadar had told him and measures would then have been taken to keep the peace and he should have considered that, circumstanced as both parties were, a row sooner or later was certain to take place neither having any exclusive or indeed any right to the ground where they were digging *kankur*, though Mr. Carter was first in the field. The Moulvce convicts the prisoners of riot attended with the culpable homicide of the deceased jemadar and agreeing with him, I sentence the prisoners as noted. Naik Khan and Mirchye being, in my opinion, the leaders are punished much more severely than the others.

*Sentence passed by the lower court.*—Nos. 3 and 4, each to be imprisoned with labor in irons for seven (7) years from the 6th September, 1856. Nos. 5, 6 and 7, each to be imprisoned for three (3) years from the above date and each to pay a fine of (150) one hundred and fifty rupees within one week, or in

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Case of  
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*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal; and repeat the pleas urged in their defence when on trial before the sessions judge. We have perused the record; and finding the charge against the prisoners fully established by the evidence, and considering that no sufficient plea has been urged by the prisoners to authorize our interfering with the sentence of the lower court, we reject the appeal.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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GOVERNMENT

*versus*

Midnapore.

FUKEER PAL.

1857.

March 6.

Case of  
FUKEER PAL.

Prisoner convicted, and sentenced under Act XXIV. of 1843 on his confessions, otherwise corroborated.

**CRIME CHARGED.**—1st count, dacoity on 12th April, 1845 in the house of Ramkisto Mahitee, son of Narayn Kyal, inhabitant of Khirky, thannah Nemal; 2nd count, dacoity on 5th April, 1851, in the house of Bhuggoo Poyreea, inhabitant of Hoosenpore, thannah Nugwan; 3rd count, dacoity on 27th May, 1852, in the house of Ram Mundul, inhabitant of Bahallah, thannah Nugwan; 4th count, having belonged to a gang of dacoits.

**Committing Officer.**—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. G. P. Leycester, officiating sessions judge of Midnapore, on the 26th December, 1856.

*Remarks by the officiating sessions judge.*—The prisoner pleads *guilty* to each of the charges on which he has been arraigned. He has been committed for trial with a view to his being made an approver, and the trial has been commenced upon without delay agreeably to the instructions which, in consequence of some correspondence between the Government and the court, were issued to the sessions judge of Hooghly under date the 20th April, 1853, No. 403. The committing officer submitted correspondence with his letter of commitment.

Only one witness Lukhon Jana, who made confession in September and October last, and was lately convicted, I am told, by the additional sessions judge has been produced in support of the charges. He swears to having been associated with the prisoner in committing dacoities for twenty years; that the

prisoner belonged to his gang; and that he and the prisoner were engaged in the crimes with which the latter is charged.

The prisoner has confessed, before the assistant commissioner for the suppression of dacoity, to the commission in all of fourteen dacoities and among them distinctly to two of those charged. The third he has designated a dacoity in the house of Juggobundoo Kamila of Ramkistopore. From the evidence of the witness it appears that Ramkistopore and Hoosenpore villages adjoin each other; that Bhuggoo Poyreea is by caste a Kamila; that prisoner and himself only committed one dacoity in Hoosenpore, not Ramkistopore, so that there is no reason to doubt that both the prisoner and witness have referred to one and the same offence. The confession has been duly attested by two subscribing witnesses.

The record of the cases noted in the margin\* have been laid before the court.

\* *Nuthee* No. 72.

Dacoity in the house of Ramkisto Mahitee son of Narayn Kyal.

*Nuthee* No. 448.

Dacoity in the house of Bhuggoo Poreca.

*Nuthee* No. 483.

Dacoity in the house of Ram Mundul.

The first record shews that both the prisoner and witness No. 1, were arrested at the time; their answers are dated the 25th April, 1845. No commitment for trial resulted.

The second record likewise shews that they were both apprehended, and that their answers were recorded on the 7th April, 1851. The witness has deposed that one of the dacoits, Judhoo Booeeyah, was arrested in *ipso facto* and from the records of this office, it appears that the said Judhoo was brought to trial, but acquitted by the sessions judge on the 19th May, 1851.

The record of the third case shews that both the prisoner and the witness were taken up at the time charged with committing this dacoity. Their examinations are dated the 30th May, 1852. Their arrest followed on the confession of one Deobo Kurn, who is alleged, in the record, to have been captured while committing it. Deobo Kurn was tried at the sessions but acquitted on the 15th June, 1852.

There is no reason whatever to doubt the voluntariness of his confession, the prisoner has unhesitatingly admitted that it was made by him and has no defence to urge. The records of the cases and the evidence of witness No. 1, sufficiently prove its truthfulness. I therefore convict the prisoner of the charges brought against him and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner before both the committing officer and the sessions judge confesses to the dacoities charged in the 1st and 3rd counts. He does not confess before

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 FUKER PAL. the committing officer to the 2nd count, as charged, nor to the 4th; but does so before the sessions judge. The record of the cases in counts Nos. 1 and 2, and the statements of other parties then apprehended, confirm these confessions. We convict the prisoner under Act XXIV. of 1843, and sentence him to be transported for life.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND SREEMUTTY JUMADYEE

*versus*

SONADHUR SAHOO (No. 10.) HURREE DEY (No. 11.)  
 RUGHOOONATH DEY (No. 12.) MADHUB SEET  
 (No. 13.) BHETOO SEET (No. 14.) AND MARKUND  
 DOSS (No. 15.)

Midnapore.

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Case of  
 SONADHUR  
 SAHOO and  
 others.

CRIME CHARGED.—Wilful murder in having on the night of the 31st July, 1856, corresponding with the 18th Srabun, 1263, killed the husband of the prosecutrix, named Pooroosutum Muhaputur by pressing his neck with a piece of wood and by inflicting blows on various parts of his body.

Committing Officer.—Moulvee Jenhadoo Nabee, deputy magistrate of Nugwan.

The prisoner sentenced capitally: and others to different periods of imprisonment; against the opinion of the sessions judge; but after further enquiries by the N. A. as to the proceedings of the deputy magistrate on the spot.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 2nd December, 1856.

*Remarks by the additional sessions judge.*—The case for the prosecution is as follows. The deceased, Pooroosutum Muhaputur, had been sent for by the deputy magistrate at Nugwan, on the suspicion that he was a person of bad character and a thief. He returned home to tell his wife and brother-in-law he must have witnesses and money to get him out of the scrape, and that he intended asking one Rughoonath Dey of Bhugur (prisoner No. 12.) for a loan. They tried to dissuade him, saying Rughoonath was one of the persons, who had been robbed, and suspected him the (deceased) of being the thief; but he replied it was no such thing, and Rughoonath would do for him what he wanted. He then went and stopped a short time with witness No. 14, who lives near him. From thence he proceeded to Bhugur where he entered Rughoonath's house in company with some of the prisoners, others afterwards joining him there. In this house all the six prisoners at the bar jointly murdered him, and afterwards conveyed the mangled corpse a mile and upwards distant to the village of Heenar, where deceased resided, and where it was accidentally found by deceased's

brother-in-law at nearly noon the following day lying on a plain of sand and stunted grass, where the brother-in-law had gone to case himself.

The law officer convicts four of the prisoners\* of wilful murder on strong presumption of guilt, and the other two of privity† to the same. I dissent from this verdict, and propose that all the prisoners

be acquitted on the following grounds.

The evidence in the case is all circumstantial, corroborated by the confessions of the prisoners both to the police and to the deputy magistrate.

The circumstantial evidence is this. The prosecutrix and witness, No. 5, her brother, never saw the deceased alive after

he left their neighbour Soondur Paharee's‡ house; and all they know is what the deceased told them *he was going to do*. Witness No. 6, only saw the dead body after witness No. 5 had, by accident, discovered it on the *maidan*. Witness No. 14, received the deceased at his house on his return from the thannah, who told him he was going to Bhugur, but not why. The witness did not see where he went. Witness No. 15, met the deceased that day at Bouleah, who told him, he says, he was going to Bhugur. Witness No. 16, also met him at Daudpore, on the road, proceeding westward; but did not speak with him. Daudpore is on the way from Heenar to Bhugur, but the witness adds Bhugur is a mile west from Daudpore, and the village of Patna, intervenes. Witness No. 17, who lives at Daudpore, also saw deceased walking through Daudpore westward the day of his death, but had no conversation with him. The evidence of all the above witnesses is clearly nothing to the detriment of the prisoners.

But witness No. 18, lives at Bhugur itself, and saw the deceased the day he died at Bhugur, with prisoner No. 13, the chowkeedar of the village, near the latter's house. It was not in this house, however, he is said to have been murdered. Witness No. 19, also saw deceased that day with prisoner No. 13, on the road at Bhugur, and witnesses Nos. 22 and 23, the same. No. 24, witness, however, saw the deceased that night with prisoners Nos. 11, 13 and 14, *at the house of prisoner No. 12*, who is father to prisoner No. 11. The witness said in the lower court he also saw No. 12, prisoner with the party, but before me he denies this much. Witness No. 25, gave evidence in the lower court to the same effect as witness No. 24, but his testimony before me was given with an inaccuracy and in a manner that led me to pay little attention to it. Witnesses Nos. 20, 21, 26 and 27, are wives of prisoners, and should not have been examined in the court below. But one of

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† Nos. 12 and 15.

‡ Witness No. 14.

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them, witness No. 26, has been examined by me, and her examination was confined to the complicity of her son, prisoner No. 11. She retracts all she said before the deputy magistrate as to having witnessed the murder, and it is not explained why, if the deputy magistrate thought he could examine her as a witness, she was not entered in the calendar as a witness to the fact; lastly, it is proved *the deceased* died a violent death by strangulation; and witness No. 22, declares he saw a piece of wood produced from the house of prisoners Nos. 11 and 12, which the former admitted had been the instrument with which the murder had been effected.

The above evidence of the Bhugur witnesses is to me not only far too vague but very suspicious. If as the prisoners are said to have confessed, it was planned by the prisoners the day before that they should murder the prisoner the following night (for they say they knew he was coming to the village) was it likely three or four of the prisoners should have openly appeared in the street with the deceased, and been seen afterwards by their neighbours at Rughoonath's house with him?

I now come to the confessions. It will be seen that they agree neither with the story for the prosecution, nor with one another.

Prisoner No. 10, said in the mofussil, prisoner No. 13, (the village chowkeedar) invited him that night to prisoner No. 12's (Rughoonath's) house to smoke. On arriving there prisoner, No. 13, said, The deceased has been committing burglaries in our villages, we will kill him. On this, the confessary with prisoners, Nos. 13 and 14, went inside and found prisoners, Nos. 11, 12 and 15, and the deceased conversing. No. 15, got up and closed the outer door, when prisoner No. 11, clapped a cloth over deceased's mouth to smother him, and the remainder all rendered assistance in doing so. Prisoner No. 11, then offered the confessary (prisoner No. 10,) and prisoner No. 14, a piece of wood to press on the deceased's throat which they did, and he died. Before the deputy magistrate, this prisoner made the same admission.

Prisoner No. 11, confessed to having agreed the day before to murder the deceased, when he came to the village that day, at the instigation of prisoner No. 13. Prisoner No. 13 told me, deceased had, the previous day, asked him to ask prisoners Nos. 12 and 15, for some money *as black mail* to save themselves from being robbed in future, when he was told to come the next day and it would be arranged. Prisoner No. 11, adds, "prisoner No. 13, himself slew the deceased in my presence, I and prisoner, No. 15, holding the hands, and prisoner No. 14, the feet, while prisoner No. 10, pressed the log of wood on his chest and throat and he died."

Prisoner No. 12, merely admitted prisoners No. 10, 13 and

14, came to his house to say they had found the deceased on the road where they had put him to death and left him.

Prisoner No. 13, gives a new account of the affair. He says prisoner No. 11, came the night of the murder to his house to say, "We have caught the deceased, who had come to commit a burglary at our house;" that he (the confessary) went with prisoner No. 11 to his house, where he found deceased sitting with prisoners, Nos. 12 and 15; that deceased said to him, "Huree and Markund (prisoners Nos. 11 and 15) ought to have paid me 2 Rupees, they didn't, and I came to break into their house, but they have caught and detained me; save my life;" that prisoners, Nos. 10 and 14, were summoned from the village to hear *this confession*, but that on their arrival prisoner No. 11, throttled the deceased and killed him.

Before the deputy magistrate this prisoner varied his statement so far that prisoners Nos. 11, 12 and 15, also assisted in the murder by pressing the log of wood on the chest.

Prisoner No. 14, said in the mofussil, "I went one day to prisoner No. 11's house. Prisoner No. 11, said to me, Poo-roosutum (the deceased) is always robbing me, and he threatens to continue doing so, unless I pay him 4 Rs. He then proposed we should go and kill him as he happened then to be in the house. *I agreed*, witness No. 26, (prisoner, No. 11's mother) then left the place and went into another apartment. Prisoner, No. 11, then pressed a cloth over deceased's mouth, prisoners, Nos. 10, 12, 13 and 15 assisting, and threw him down," "I," says the prisoner, "felt faint at this time at what I saw; but I saw prisoners, Nos. 10 and 11, pressing on his chest, and that they all killed him." Before the deputy magistrate the prisoner's statement was nearly to the same effect, he merely added he disapproved of what was being done, and was made to enter the house.

Prisoner No. 15's story in the mofussil was this. Prisoner No. 11, called me to him on the road the day after the murder and said, "Last night deceased was killed in our house by me and prisoners, Nos. 10, 13 and 14." In the magistrate's court his reply was to the same effect.

I will first explain why these confessions do not satisfy me, and secondly, why there is a want of probability and proof in the case, which, in my opinion, would render a conviction unsafe.

The crime was committed on the night of 31st July: on 1st August, early in the day, it was reported by the witness Lukun Bubooa. On the same day, the darogah examined the body; took the prosecutrix's deposition involving the prisoners; and arrived at the prisoners' village Blugur. The prisoners, it is stated by the darogah, were not arrested till the 3rd and 4th August, but no reason is given why they were not seized sooner.

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*Perhaps they were.* On the 3rd August, the deputy magistrate joined the darogah at Bhugur, and he says in his English abstract, the prisoners had been asked what they had to say in their defence, when they had denied their guilt; but nothing of this appears on the record beyond an allusion to it in a *rozeena* report, dated 3rd August. On the 4th August are dated the confessions of all the prisoners taken before, both the darogah and the deputy magistrate, the confessions having been made on the prisoners being *urgently asked to make them by the darogah and deputy magistrate together*; but the darogah makes no mention of the deputy magistrate's presence on the occasion. The prisoner Nugwan's confessions were made on 7th August. If the previous confessions were made in the deputy magistrate's presence at Bhugur, why was a second confession required from the prisoners? The prisoners before me have denied both their guilt and the truth of their previous admissions. They say they were flogged into making them by two of the deputy magistrate's chuprassies, to his knowledge, by his orders, and as it were in his presence; but this I of course cannot believe, although it may have been possible enough the police did something to the prisoners to make them, after first denying their guilt, confess it by being "urgently asked" to do so, what the prisoners had confessed "in the mofussil," the deputy magistrate being by, they could not of course repudiate three days later before that officer when sitting in his court at Nugwan.

The want of probability, and of the proof of a sufficiently strong succession of links to the chain of circumstantial evidence, is this. There is not a single atom of evidence on the record to shew the deceased was ever suspected to be a thief; or was sent to or present at either the thannah or the deputy magistrate's court on a charge of suspicion of being a bad character. There is also not a particle of proof that Rugoonath or any other house in Bhugur had been recently attacked by burglars. There is further no evidence of any kind to shew on what grounds the deceased was suspected of having committed them, even if there had been burglaries committed. And lastly, is it likely six householders of Bhugur should have no means of stopping the depredations of one solitary burglar but by enticing him to their village, being seen in public with them there, and then putting him to death?

On the whole, the evidence does not appear to me legally sufficient (whatever may be the suspicion) to convict four of these six prisoners of deliberate and wilful murder and the other two of privy thereto; and I propose that they be all released.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence against the prisoners consists of their voluntary confessions before the police darogah, in the presence of the deputy magistrate on 4th August, and again before

the deputy magistrate in his cutcherry at Nugwan on 7th idem, and the depositions of certain witnesses, who saw the deceased on his way from his own house to that of the prisoner, Madhub Sekt, No. 13, whom he accompanied to the house of Rughoo Dey and Hurree Dey, prisoners Nos. 11 and 12, and by whom he was seen at their house, smoking and talking on the night of the murder. The additional sessions judge discredits the whole evidence; and considering the confessions not to have been given voluntarily, he notices that the deputy magistrate, in his report, states that the parties at first denied the charge, but on *being urgently asked by him and the darogah*, confessed their participation in the murder. He accordingly, with reference to these and other reasons in his letter above, recommends that the prisoners be acquitted. This Court called upon the deputy magistrate to explain his proceedings, and what he meant by the expression "*urgently asked*;" and from the explanations\* now

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\* *From the Register of the Nizamut Adawlut, to the additional sessions judge, Midnapore, No. 33, dated 20th January, 1857.*

The Court, having had before them your letter No. 4, dated the 4th ultimo, referring the trial of Sonadthur Sahoo and others, charged with wilful murder, would wish you to forward the following extract from your report, through the magistrate, to the deputy magistrate, for such explanation as he may wish to offer on the points noticed by you, and submit the same, with your opinion thereon, for the Court's orders.

*Extract.*—On the 4th August, are dated the confessions of all the prisoners taken before both the darogah and the deputy magistrate, the confessions having been made on the prisoners being *urgently asked to make them by the darogah and deputy magistrate together*; but the darogah makes no mention of the deputy magistrate's presence on the occasion. The prisoner Nugwan's confessions were made on 7th August. If the prisoners' confessions were made in the deputy magistrate's presence at Bhugur, why was a second confession required from the prisoners? The prisoners before me have denied both their guilt and the truth of their previous admissions. They say they were flogged into making them by two of the deputy magistrate's chuprassies to his knowledge, by his orders, and as it were in his presence; but this I of course cannot believe, although it may have been possible enough the police did something to the prisoners to make them, after first denying their guilt, to confess it by being "*urgently asked*" to do so. What the prisoners had confessed in the "*mofussil*" the deputy magistrate being by, they could not of course repudiate three days later before that officer when sitting in his court at Nugwan.

*From the additional sessions judge of Midnapore, to the register of Sudder Nizamut Adawlut, dated Burdwan, the 10th February, 1857.*

With reference to the Court's letter No. 33 of the 20th ultimo, I beg herewith to forward in original the explanation of the deputy magistrate of Nugwan, called for therein, which was only received this morning.

*From the deputy magistrate of Nugwan, to the magistrate of Midnapore, camp Contai, the 5th February, 1857, No. 40.*

With reference to the letter of the additional sessions judge, dated the 28th ultimo, No. 3, I have the honor to state that I considered the confessions of the prisoners to be genuine and voluntary, and I was not aware



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submitted; it appears that no improper influence to obtain the confessions was used, and that they were given voluntarily; and that the deputy magistrate's presence and the manner in which he superintended the inquiry, were sufficient to prevent any

that they were under the influence of any harsh treatment, nor did the prisoners make any representation to me on the subject. As the confessions of the prisoners in the mofussil were recorded by the darogah in my presence they were not considered as foudary confessions, and I therefore thought it necessary to take their confessions again in court on my return to Nugwan.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 110, dated 13th February, 1857. The Court direct with reference to the explanation above recorded, that information be called for from the deputy magistrate of Nugwan, to be submitted through the usual channel, but without any delay, on the following points. The deputy magistrate says in his abstract of information in the calendar in this case, that he and the darogah, on the prisoner's first denial, again *urgently asked* them (the prisoners); and all of them, except Deboo Mahitee confessed their guilt. What is meant by the expression *urgently asked*? What exactly was said to the prisoners either by the deputy magistrate or the darogah? at what time of the 3rd August did the deputy magistrate arrive at the spot? and if the darogah had ill-used the prisoners, was the deputy magistrate in a position to have discovered it, and how? How much of the darogah's proceedings were conducted in his (the deputy magistrate's) presence? and was he in a position to prevent any ill usage towards the prisoners by his own chuprassies or others at his own court? A reply on all these points is required, as soon as possible, in the fullest detail, and the most explicit terms. In fact the deputy magistrate is asked to state, and to shew, that the confessions were perfectly voluntary and genuine in the police, and the police proceedings correct in every way; and that he was in a position to be able to certify these facts from his presence on the spot, and his personal knowledge.

*From the deputy magistrate of Nugwan to the magistrate of Midnapore, camp Deypaul, the 17th February, 1857, No. 50.*

With reference to the resolution of the presidency Court of Nizamut Adawlut, dated the 13th instant, a copy of which has been sent to me direct from the office of the register, I have the honor to state that on my arrival at the spot I called the prisoners in my presence and cursorily asked them, if they had committed the murder or knew any thing about it, and on their answering in the negative they were made over to the burkundazes in whose custody they were. I then orally examined the prosecutrix and her witnesses, by whose statements it appeared that the deceased was seen about the evening previous to the murder proceeding in the direction of Bogur, the village where the defendants resided. Some of the witnesses stated that they saw deceased going with prisoner Madhub Seet, on the night of occurrence towards the house of prisoner Rughoo Dey; other witnesses said that they saw him afterwards sitting in the house of prisoner Rughoo Dey. Even the wives of the prisoners Madhub Seet and Bhetoo Seet, deposed that in the evening of occurrence the deceased went to their house from whence he was taken by their husbands to the house of Hurree Dey, prisoner, and that their husbands returned after midnight with wet clothes and went to bed without taking any food. On the score of these statements, which bore an air of plain truth, I again called the prisoners in my presence, and asked them to tell the truth, as the wives of prisoners Bhetoo Seet and Madhub Seet, had already disclosed the facts,

improper means being resorted to by the police to get at the truth.

The judge considers the story related in the confession of the prisoners as unworthy of credit. He considers it unlikely that six householders of *Bhugur* should have no means of stopping the depredations of one solitary burglar, but by enticing him to their village, being seen in public with him there, and then putting him to death. But when the circumstances, as detailed in the confessions, are considered together, the story is not so very improbable. The deceased was a notorious bad character, (this is stated even by his wife,) and apparently the terror and annoyance of the country; the houses of the prisoners Rughoo Dey and Murkund Doss had been several times entered, and property stolen by (as was supposed) the deceased. Though frequently apprehended and sent in, the deceased always seems to have escaped conviction, and the prisoners, one of whom, Madhub Chowkeedar, had been threatened by him, may have determined to kill him, in the hope that his death would be considered by the community a good riddance, and no questions be asked. They may therefore have concealed their ill-will; and agreed to pay him something to secure their property from his further depredations; but took the opportunity of his visiting the house of Rughoo Dey to demand such payment, to set upon and murder him.

In his confession both to the darogah and deputy magistrate,

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which corroborated the statements made by the prosecutrix and her witnesses. The discovery of their secret, made by the wives of prisoners, Bhootoo Seet and Madhub Seet, so much dejected them that they thought it no longer possible to conceal the truth, and they accordingly confessed their guilt. The confessions of the prisoners were perfectly voluntary and genuine, and not the effect of any ill-usage, as one of the prisoners named Hurree Dey, told me to accompany him to his house, where he would show the exact spot on which the deceased was killed and point out the piece of wood with which the neck of the deceased was pressed. The darogah and myself proceeded to the house of the prisoner accompanied by several respectable witnesses and the prisoner himself. The prisoner showed the spot where the deceased was deprived of his life, and where his dead body was tied up for removal, and he also gave up the lethal weapon. I do not exactly remember the time of my arrival at the spot, but I believe it was about 8 or 9 o'clock A. M. The examination of some of the witnesses and the confessions of all the prisoners were committed to writing by the darogah during the time I was on the spot. I hope the above explanation will be deemed satisfactory by the Court on all points. I beg respectfully to observe that to call into question the honesty of the proceedings of a judicial officer merely on the bare assertions of prisoners, whose interest it is to bring in such exculpatory pleas, is unjust, and will destroy the confidence hitherto reposed in them by the public, who will be very cautious and hesitative in giving any clue for the future.

I beg to request that you will kindly submit this explanation through the usual channel to the Nizamut Adawlut.

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Sonadhur, prisoner No. 10, distinctly admits that he and Bheetoo Seet, prisoner No. 14, murdered the deceased by pressing his throat with a piece of wood till he died, while the others held him down; and that then he and the others carried the body to the place where it was found the next morning. The prisoners Nos. 11 and 14, who confess to complicity, agree that Sonadhur No. 10, was one of the parties, who helped to strangle the deceased; but they differ as to the other; Hurree criminating Madhub Seet, prisoner No. 13, and Bheetoo criminating Huree, No. 11. Madhub Seet Chowkeedar, prisoner No. 13, admits to having been present, when the murder was committed, and states that Huree, prisoner No. 11, alone strangled the deceased, who had been caught while attempting to commit a burglary; that neither Sonadhur nor Bheetoo were present; (though this statement is contradicted by the confessions of those prisoners, as also by this prisoner's confession to the deputy magistrate;) that he swore not to tell any one of what had occurred, and that Rughoo, No. 12, Mahkund No. 15, and Huree No. 11, disposed of the body. The prisoners Nos. 12 and 15, acknowledge being privy to the murder.

There is, no doubt, as remarked by the additional sessions judge, considerable difference in the statements made by the prisoners in their confessions; but the difference is such as might be expected when parties, confessing their own complicity in a crime, endeavour to put off the responsibility of being the principal, on some other of their number. In such cases, however, their confessions, notwithstanding many discrepancies, may be received as proof against themselves, in regard to what they admit, if shown to have been made voluntarily. We see no reasons to reject the statement in the confessions in the present case; and believe them to contain generally a true statement of the facts of the murder, and of the parties engaged in it. The evidence of independent parties, and of the confessing prisoners, tallies as to the circumstance of deceased's troublesome character, as to the deceased having gone to Rughoo and Hurree's house in the previous evening, as to the place where the corpse was taken, and where and how it was found. We believe also the confessions to be voluntary, with especial reference to the deputy magistrate's explanations.

As the murder appears to have been most deliberately planned and executed, we consider it necessary to pass a sentence of capital punishment on Sonadhur Sahoo, prisoner No. 10; and convicting Huree Dey, prisoner No. 11, Madhub Seet, No. 13, and Bheetoo Seet, No. 14, of being accomplices, we sentence them to imprisonment for life in transportation beyond sea; Rughoo Dey, prisoner No. 12, and Markund Doss, prisoner No. 15, convicted of privy, to seven years' imprisonment with labor and irons.

In reference to the conclusion of the deputy magistrate's letter of the 17th ultimo No. 50, we observe that the enquiries of this Court were not made to question the honesty of a judicial officer; but with a view to satisfy ourselves that from his position and proceedings on the spot, he had the means and opportunity of preventing any mal-practices of the police, in regard to the confessions of the prisoners, and the statements of witnesses.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND GOONANUND DOSS

*versus*

RUTTUN SINGH (No. 1), KUNHYAH SINGH (No. 2),  
AND PHOOLAH SINGH (No. 3.)

Tirhoot.

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CRIME CHARGED.—Dacoity with severe wounding on the night of 20th July, 1856, in the *usthul* of Mohunt Bunwarry Doss in mouzah Churout and in which Surroop Doss and six others were severely wounded.

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SINGH and  
others.

CRIME ESTABLISHED.—Dacoity with severe wounding of seven persons.

Committing Officer.—Mr. H. Richardson, magistrate of Tirhoot.

Tried before the Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 3rd November, 1856.

*Remarks by the sessions judge.*—The prisoners (and six others acquitted) were charged with committing a dacoity with severe wounding on the night of 20th July, 1856, on the *usthul* of Mohunt Bunwarry Doss, in mouzah Churout and in which Surroop Doss, and six others were severely wounded, and conformably to Construction 750, the case appears to be correctly described as a dacoity.

Prisoners convicted; the pleas in defence and appeal being insufficient to counter-balance the direct and circumstantial evidence for the prosecution.

Information of the affair was given at thannah Jaley on the 21st July or day following its occurrence by Eshree, witness No. 14, Gorait of mouzah Churout, who, however, not having himself witnessed the robbery could not in his information, name any of the persons concerned in it.

The joint-prosecutor with the Government is the Adhikaree or manager of a *muth* in mouzah Churout, distant about one *cosse* from mouzah Bulwah were the prisoners Ruttun Singh and Kunhyah Singh, who are Sikhs and brother-in-law, reside, and it appears from the record and evidence adduced that the prosecutor, Goonanund Doss, being on the night of the 20th July,

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at the *usthul*, though in a separate part of the building from that to which the robbers came, about midnight, some twenty or twenty-two persons armed with guns, swords and shields and among the number eight or nine Sikhs known to be such from their wearing *janghees* or breeches, and having their long hair and beards concealed with cloths tied round them and ten or twelve people of this country, entered the *usthul* by a window at the back of the building which they opened, on which several persons inside, some Nigabans, and some Byragees, gave the alarm, and before the villagers could arrive the robbers wounded seven persons, all more or less severely, viz., the prisoner Ruttun Singh was seen to strike Bhatoo Kewut (witness No. 3,) with a sword on the right shoulder, the prisoner Kunhyah Singh, Sham Rae (witness No. 2,) with a sword on the left cheek, and the prisoner Phoolah Singh, Surroop Doss, (witness No. 1,) also with a sword on the left arm, and as the latter prisoner was retreating with the other robbers, Pullut (witness No. 7.) struck him a blow with a *lattee* on the head on which the robber turning round dealt the witness another blow, which wounded him on the web of the thumb and forefinger of the left hand, on which a scuffle ensued between them, and though the prisoner still used his sword, the witness did not let him go until the villagers coming to his assistance, the robber was secured. Three other persons Ramdyal (witness No. 4.) Bheechook (witness No. 5.) and Hurree Singh (witness No. 6.) also received sword-wounds from some of the robbers, but they were unable to swear by whom they had been struck.

The arrival of the villagers prevented any property being carried off.

Besides the testimony of the seven wounded men, the evidence of six other persons eye-witnesses (Nos. 8 to 13,) establishes the guilt of the prisoners. Four of them (Nos. 8 to 11,) deposed to having both seen all three prisoners striking the persons whom they have above been shewn to have wounded and also the seizure of the prisoner, Phoolah Singh, after he had wounded the witness Pullut. The other two (Nos. 12 and 13,) though they did not actually see the wounds inflicted by the prisoners, Ruttun Singh and Kunhyah Singh, yet they arrived in time to see six of the persons lying on the ground and to witness the capture of the prisoner, Phoolah Singh, after the witness, Pullut, had struck him with his *lattee*, and he had in return dealt the latter a blow with his sword.

Three other witnesses (Nos. 15, 16 and 17,) deposed that being engaged about 11 o'clock on the night of the robbery in watching their fields near the road-side, they saw the prisoners, Ruttun Singh and Kunhyah Singh, and twenty or twenty-two people with them, proceeding from the east in a westerly direction (the road in question leading either to mouzah Churout or

to Seetamurree) and on their asking Ruttun Singh where he was going, he replied to "Seetamurree," these witnesses also deposing that eight or nine of the above persons were "Sikhs" and the rest, people of this country.

Three witness, (Nos. 19, 20 and 21,) who live in mouzah Bulwah in which the prisoner, Ruttun Singh resides, depose to their knowing that for about ten or fifteen days before the robbery several "Sikhs" had been living at that prisoner's house, the last of whom (the chowkeedar of Bulwah) added that in going his rounds on the night of the robbery and challenging Ruttun Singh, the latter did not answer, that the Sikhs whom he (witness) had before seen there were gone, and that only the females inside the house answered his challenge.

It is also in evidence and not denied by the prisoners that Ruttun Singh had ground of enmity and probable cause of revenge against the prosecutor, Goonanund Doss, in consequence of the latter having in satisfaction of a decree which he had obtained against the prisoner, Ruttun Singh, in a suit for bond debt due by the latter's father, sold the landed property of the prisoner.

The prisoners all pleaded *not guilty*. Ruttun Singh in his defence sets up an *alibi* urging that on the night of the robbery he was at a place called "Koorsaha" (a factory or dépôt of the Railway Company) to substantiate which, he calls three witnesses one a Mr. George Collis, junior (an Indo-Briton) employed in providing sleepers for the railway and two other servants of his, who certainly swear that during all the night of the 20th July, the prisoner was at Koorsaha. For several reasons, however, I cannot give credit to what appears to me the suspicious testimony of Mr. Collis or his servants in the face of much more satisfactory and convincing evidence for the prosecution.

*First.* Mr. Collis cannot be considered a disinterested witness, for while he himself admits that he has known the prisoner since 1842 and has had dealings with the prisoner's father and the prisoner himself, states that he went to Koorsaha on the occasion under reference to receive money from Mr Collis ; it appears from copy of a proceeding of the moonsiff of Jaley, dated 2nd February, 1856, that in the above execution of decree case when the prisoner Ruttun Singh's property was about to be sold in satisfaction of the prosecutor's decree, Mr. Collis came forward as objector pleading purchase by a prior bill of sale of the share under objection from the prisoner's father, but his objection which had been first struck off as beyond time on the 6th March, 1855, on being again brought forward was on that ground disallowed by the Moonsiff on the above date.

*Secondly.* While it is not satisfactorily explained why the prisoner remained, as he is stated to have done, 8 or 9 days at Koorsaha in Mr. Collis' absence, waiting for his return, the latter

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deposes that he last saw the prisoner at sunset on the evening of the 20th and can only conclude that he remained all night at Koorsaha from hearing and recognising his voice with that of others singing about 11 or 12 o'clock.

*Thirdly.* Although his servants depose that Mr. Collis occasionally held cutchery on Sundays and did so on the 20th July, that too seems questionable and unlikely.

*Fourthly.* The prisoner, Ruttun Singh, a Brahmin, is stated to have put up during his several days' stay at Koorsaha with Mr. Collis' servant "Ramdoss Khansama" (witness No. 22) who also calls himself "bearer" and is of the "*Hujjam*" caste, and the latter being asked whether there were no servants at the factory of higher caste than himself replied that there was a rajpoot peyada and the moonshee and khezanchee of the Kait caste, under which circumstances it seems strange and improbable that a high caste Brahmin Sikh would, in preference put up for several days and nights with a *Hujjam*!

*Fifthly.* I cannot but think that had Ruttun Singh (with whom Mr. Collis appears to be on terms of intimacy), really been at the factory on the night of the 20th July and so many days before some other and more respectable servants or *amlah* of the factory (such as the moonshee or khezanchee above mentioned) must have known of it particularly if, as is alleged, Mr. Collis held and the prisoner appeared in cutchery on the Sunday, and that they would have been cited to prove it.

The defence of the prisoner, Kunhyah Singh, is that he came from his home in Patua to Mouzah Bulwah, where his father-in-law lives, to take his wife home, accompanied by five other Sikhs (among those committed), but he only called witnesses to speak to his previous good character.

The defence of the prisoner, Phoolah Singh, is tantamount to an admission of his presence at the "*usthul*" on the night of the robbery and pleading only that he was unjustly seized, his sword, shield and money taken from him and himself beaten, he called no witnesses.

The recognition of the prisoners, Ruttun Singh and his brother-in-law, Kunhyah Singh, and of the prisoner, Phoolah Singh, after he had been captured and the severe wounding of four of the witnesses by those prisoners (three others having been wounded by the robbers) are in my opinion clearly and conclusively established by the evidence for the prosecution, which I consider consistent and credible throughout, while the very probable cause of the outrage, altogether unprovoked and quite unjustifiable, is also satisfactorily explained, there being no more variations in the convicting evidence and those not material than might be expected to occur in such a case without affecting the general credibility of the witnesses. As such testimony is not to be impeached by the suspicions and as it appears to me improbable

evidence brought forward to prove an *alibi* for the prisoner Ruttun Singh, the defences of both the other prisoners being to no purpose and the evidence adduced by one of them in no degree exculpatory, those prisoners and the prisoner, Phoolah Singh, have been convicted of the crime charged, and sentenced to imprisonment for 10 years with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Counsel for prisoner, Mr. R. Norris; Counsel for Government, Baboo Sumbhoonath Pundit.

The evidence against the prisoners consists of the recognition of them by moonlight by prosecutor and his witnesses; some of whom were wounded by the prisoners; and of their having been seen with a body of others going in a direction leading to prosecutor's residence, about 11 p. m. of the night of the occurrence.

The pleas of the counsel for the prisoners are; *first*, that the recognition is not satisfactorily proved; *second*, that the *alibis* are so.

It is urged on the *first* point, that the prosecutor admits that the dacoits had their faces bound in cloths; that there was only moonlight for recognition; that there must have been much terror and confusion to prevent clear recognition; that the first information to the thannah by Isree, chowkeedar of the village, stated all other particulars in accordance with what the record now shows, but although he mentioned that he derived his information from the chowkeedar of the *muth* itself, he (the *village* chowkeedar), never named any one of the dacoits to the police, but said that the attack had been made by persons unknown; that witnesses to the facts Nos. 8, 9, 10 and 11, stated to the police that they came up from the village, while they stated to the magistrate that they slept at the *usthul*; that prosecutor and some of the wounded witnesses speak of the villagers having come up after the wounding had rendered those witnesses insensible; while the villagers on the other hand stated that they actually saw the wounding; that the witness Bheechook, No. 5, did not identify prisoners Nos. 1 and 2, before the magistrate, and stated before the sessions judge that he did not identify any; that the enmity of prosecutor to prisoners Nos. 1 and 2, was clear on the record; that most of the prosecutor's witnesses are his servants and under his influence; that their deposing with one voice as to identifying prisoners, Nos. 1 and 2, should be regarded with much suspicion on that account even; lastly, that this Court in weighing the character of the evidence for the prosecution would find it too unsatisfactory to warrant a conviction.

The Government pleader in regard to these pleas has urged that every petty contradiction or difficulty in evidence in a case of this nature is not to stop the course of justice; that the es-

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stantial facts, and the identification of prisoners Nos. 1 and 2, are sufficiently proved; that the first information of Isree Chowkeedar of the *village*, and *not* of the *muth*, would naturally be of the main occurrences, leaving the identity of the supposed criminals to be proved in due course; that the coming of the villagers was deposed to as a matter known to, but not as specifically and individually seen in each case by each wounded witness; that the villagers' evidence was quite independent, and naturally the nearest and best after that of the wounded men; that though there had been formerly suits in the courts between prosecutor and prisoner No. 1, the result was that the latter had been ousted from his land, and had every motive to gratify revenge in the manner this dacoity would admit of, while the prosecutor had nothing further to gain, and no motive of revenge to gratify.

On the *second* point, the *alibis*, it is urged for the prisoners that if Mr. Collis had even an interest in the lands of prisoner No. 1, that fact would not warrant the presumption of perjury; that Mr. Collis' evidence was given in a clear straightforward manner; that probabilities must be weighed in this matter; and that when it was sworn by Mr. Collis that prisoner, No. 1, had been seen by him at sunset, had been heard by him at 11 p. m. and had been seen by him next day at sunrise, it is most improbable that that prisoner could have committed a dacoity that same night at 12, at a place 16 miles off Mr. Collis' abode. The counsel added that planters frequently hold cutcheries on Sunday; that the prisoners being Sikhs, were not so particular as to the persons with whom they eat and lodged, as other Hindoos; and that Mr. Collis was the best evidence on the record, and should be preferred.

The Government pleader urged that when it was clear from Mr. Collis' own statements that he was so far interested for prisoners that he helped in preparing petitions for them, his evidence could not be considered impartial; that the prisoner No. 1, pleads that he went to Mr. Collis for payment of money, staid ten days waiting to see Mr. Collis, with that object; yet the result of his visit is nowhere stated or shewn, in support of his plea of it; that in regard to prisoner No. 2, his going to the house of prisoner No. 1, as stated by himself, for the main matter in a marriage ceremony, and one requiring the presence of prisoner No. 1, without ascertaining that the latter was at home, while the other Sikhs (committed prisoners) going with him, prisoner No. 2, to prisoner No. 1's merely as friends, should find it necessary to remit money to their families, whom they had just left, and to whom they were about to return, were facts obviously most improbable, while at the same time they were facts stated by the prisoners themselves.

We do not find sufficient reason to interfere. In regard to

the general evidence for the prosecution, the attack and wounding of the seven men is clearly shewn. We think too it is also satisfactorily shewn that prisoners Nos. 1 and 2, were identified by the men whom they wounded, and who were inmates of the *usthul*. The wounds were sword and *lattee* wounds, and the necessary proximity, and moonlight together, would admit of such identification. It is also in evidence that the prisoners were in the habit of visiting the *usthul*, and lived one *coss* or so off. We do not think that the evidence of the villagers is to be rejected on account of the alleged difference in their statements to the police, the magistrate, and the sessions judge, as to their having come up from the village, or slept at the *usthul*; for this difference only exists in the case of one witness Ramoodeen, No. 8. Further the alleged inconsistency in the evidence for the prosecution as to the wounded men deposing that the villagers came up after they (the witnesses) were insensible, while if insensible, they could not have seen the villagers come up, is not of that nature to vitiate the whole main evidence in a case of this kind, as to the other circumstances of it, which are all supported by the fact that Phulah Singh, prisoner No. 3, (since dead,) who it is admitted, was with prisoner No. 2, and other Sikhs at the house of prisoner No. 1, on the night of and previous to the dacoity, was wounded and captured in the affair. The depositions in regard to his identity and wounding, and whom he wounded, being corroborated by this, may be the better trusted as to the identity of the prisoners Nos. 1 and 2, under all the circumstances of this case.

As to the *alibi* of prisoner No. 1, the recognition of a native's voice singing with others 100 feet off at night, is a matter of too uncertain a nature to justify its being proof of the *alibi*. Then from sunset of Sunday to sunrise of Monday would afford time for a man to go eight *coss*, commit this crime at night, and return by morning. And this plea must be considered not only by itself, but in connection with the credit to be given to the evidence for the prosecution generally. There is no proof of the *alibi* of prisoner No. 2, nor has any sufficient reply been made to the objections of the Government pleader in regard to this plea on the part of that prisoner.

We reject the appeal.

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## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*Hooghly. SHEEBOO GHOSE (No. 1.) AND GOPAUL GHOSE  
(No. 2.)

1857.

March 9.

Case of

SHEEBOO

GHOSE

and others.

CRIME CHARGED.—No. 1, rape on the person of the prosecutrix, Lukheemony Bagdeenec, No. 2, aiding and abetting in the above crime.

Committing Officer.—Mr. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 23rd December, 1856.

Prisoner convicted; the direct circumstantial evidence for the prosecution being sufficient.

*Remarks by the additional sessions judge.*—All the parties live at the village of Narainpore, and the prosecutrix is a widow about twenty-five years of age, residing with her mother and brother. Just after dusk on the evening of the 4th July last, the moon being close to the horizon, and about to set, the prosecutrix was returning home from Sonatun Koloo's house, in the same village, where she had been to purchase some milk, when the two prisoners came up behind her, forcibly dragged her under a clump of trees; and while the second prisoner Gopaul held her down, the first prisoner Sheeboo forcibly ravished her. Gopaul made an attempt it appears to press a cloth over her mouth to prevent her giving an alarm, but having also to hold her down by the arms the attempt was only partially successful, for her screams and cry for rescue were heard by three of her neighbours who were loitering on their way home on the edge of a tank, a very short distance only from the spot. These three men, the witnesses Nos. 2, 3 and 4, hastened to the place; discovered both prisoners in the act; and, on their attempting to make off, detained them. The next morning the prosecutrix reported the matter to the policeman in charge of the *phaurce* close by, and he on the 23rd Assar, or 5th July, wrote to report it to the thannahdar, the prosecutrix proceeding herself with the report to the thannah. After an investigation had been made, the parties seeing probably that the case was a clear one, wished to adjust the affair, but the deputy magistrate and sessions judge refused to allow it to be compromised.

The prisoner, Sheeboo, declares he has been in the habit of intriguing with the prosecutrix; and that she has quarrelled with him for not paying her sufficiently; and has now tried to revenge herself; but I am not at all inclined to believe in the first place there had been previously any *criminal* intimacy between

the parties, while in the second the disagreement resulting from its rupture is unknown to all in the village, whether witnesses for the prosecution or for the defence. This prisoner now further (before me for the first time) declares he was at Echapore at the time in question, and has cited witnesses to prove this; but Echapore is close by Narainpore, and the prisoner could have been easily at both places in the same half hour. The second prisoner, Gopaul, admitted both at the thannah and before the magistrate that he and Sheeboo had met the prosecutrix on the evening in question, and that Sheeboo *had* taken her into the clump of trees, and *had had* connection with her, he, Gopaul, looking on all the time; but he never admitted *the rape*. Now he repudiates his former statement and simply maintains he is a person of good character, who would not commit such an offence or witness its being committed.

The law officer concurs with me that the prisoner, Sheeboo is guilty of the rape, and the prisoner, Gopaul of aiding and abetting; and I recommend each prisoner be sentenced to four years' imprisonment with hard labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) In this case, the prosecutrix and witnesses, Nos. 2, 3 and 4, clearly and consistently depose to the facts. The chowkeedar, witness No. 5, contradicts so much of their statement as refers to those witnesses making over the prisoners to him on their seizure. But we do not think this vitiates the evidence for the prosecution; because it is clear from the record, that the complaint was immediately made to the ghatee burkundaze; and that the chowkeedar then informed him of it, as of a rape. The chowkeedar moreover did not depose at the magistrate's court; and the record shews there was an endeavour to hush up the matter. We do not think Sheeboo, prisoner No. 1, substantiates his *alibi*; or that it is incompatible with his committing the offence charged. Prisoner No. 2, admits to the magistrate his presence within four cubits, and his seeing the act; although he states that the woman consented. His statement at the sessions is the reverse of this; and he says that his previous one was tutored.

We sentence the prisoners as recommended by the sessions judge.

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and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND ANOO BISWAS

*versus*

Jessore.

SOBIR BISWAS.

1857.

March 9.

Case of  
SOBIR  
BISWAS.

CRIME CHARGED.—Having, in the month of January or February, 1856, corresponding with Magh or Falgoun, 1262, B. S., forged a *kabooliat*, purporting to have been given by Kabil Biswas, the father of the plaintiff, Anoo, to Tarinichurn Sircar, at an annual *jumma* of Rs. 8-8-6.

CRIME ESTABLISHED.—Forgery.

Appeal re-  
jected. Pri-  
soner convict-  
ed of forgery.  
Plea as to ab-  
sence of prose-  
cutor, invalid.

Committing Officer.—Mr. E. W. Molony, officiating magis-  
trate of Jessore.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 8th of August, 1856.

*Remarks by the officiating sessions judge.*—Under the provisions of Act I. 1848, the case was made over to the criminal authority by the moonsiff of Kaloopole, in whose presence the accused disclosed (when giving his deposition as a witness cited to attest the execution of the document, now shown to be a forgery,) that he wrote the forged document and the names of the subscribing witnesses, being urged to do so by a gomashita, Brijoooy Dutt, in whose service he was at the time. The forged document, marked A is before the court. It purports to be a *kabooliat*, dated 25th Jyet, 1251, of one Kabil Biswas, father of complainant, acknowledging a tenure of Rs. 8-8-6, under one Tarinichurn Sircar. The names of witnesses to the execution are inserted, including that of the prisoner.

The evidence on the part of the prosecution consists in the testimony of several respectable witnesses, who affirm that the complainant never did hold any tenure under Tarinichurn Sircar and that the lands he does hold are the property of other parties named. There are likewise the depositions of witnesses, Nos. 1, 2 and 4, who were present at the prisoner's confession before the magistrate, and whose evidence as to the confession being voluntary cannot be impugned, as the prisoner in this court, though he pleads *not guilty*, admits in his defence that he did write the forged document and affix to it his own name as a subscribing witness to its execution.

The prisoner is defended by counsel and has cited two witnesses for the defence. The witnesses were in attendance, but the prisoner desired that the evidence of only one witness, No. 11, should be taken down. This witness states the prisoner was in the service of Brijoooy Dutt.

The prisoner's counsel urges in defence that there is no evidence to convict the prisoner of having forged the name of Kabil Biswas, that his confession before the magistrate only admits that he wrote the forged document and the names of the subscribing witnesses (deceased persons) much against his will and only at the repeated desire of his master, Brijoo Dutt, and that the fact that through the information the prisoner himself spontaneously gave, when cited as a witness to prove that the fraudulent document was genuine, the forgery was discovered, which itself shows he never could have had any fraudulent intent when writing the forged document. It is further urged that the charge was not preferred by the party to it and that the accused is entitled to his release as the commitment was bad in law. (See Nizamut Reports, dated 4th February, 1854, page 158, in the case of Ishurchunder Rae and others.)

The mere point that there is not evidence on the record to prove that the prisoner completed the forgery by affixing the name of the party purporting to have signed and given the deed, does not, I consider, exonerate him or in any way lessen his guilt. It is a principle of law on forgery that though several may combine to forge an instrument and each execute by himself a distinct part of the forgery and they are not together when the instrument is completed, yet they are nevertheless ALL guilty as principals. The illegality of the commitment, I do not in any way perceive, and the mere fact that the complainant is now indifferent whether the charge be continued with or not, cannot, I hold, vitiate the proceedings.

That the prisoner is guilty of the false making, or "*malo animo*" of a written instrument for the purpose of fraud and deceit and to the prejudice of another man's right is, I consider, fully proved both by the confession in the magistrate's court, the admission in this court, the existence of the forged document and the various circumstances attending the discovery of the crime. That the prisoner committed the criminal act at the repeated request of another party is no extenuation of his guilt, and that he disclosed the fact of the forgery is, I consider, more to be attributed to the circumstance that he was no longer in Brijoo Dutt's service and had no particular object to keep it concealed, than from any desire to further the ends of justice and truth, I therefore convict the prisoner on the charge, and sentence him to imprisonment with labor in irons for (5) five years from this date.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner's appeal is on the ground that there is no person as prosecutor; and no forgery is averred by any one in that capacity; that it is not proved that Prisoner wrote the forged writing; and that there is only suspicion that the hand-writing is his.

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The prisoner to the magistrate admitted that he wrote all but the name of *Kabil Biswas*, but that he did so by his master's order, who promised to produce another person under the name of Sobir Biswas, if it became necessary to have any deposition given in court. To the sessions judge the prisoner denied writing the dates and witnesses' names.

The case is clearly proved against the prisoner, and he substantiates no defence. The guilty knowledge and fraudulent intent are both proved from the details of his own statements; and the Court observe that the whole paper appears written with one hand, although the name of Kabil Biswas appears somewhat disguised and enlarged. In regard to the legal point urged of no individual charging prisoner, a reference to Nizamut Adawlut Reports, Volume 4, Part I. 1854, page 454, case of Sheikh Kudun, will shew the objection to be invalid.

We reject the appeal.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs. *Officiating Judges.*

## GOVERNMENT AND POORNANUNDO SURRUNGEE

*versus*

FUTTA SINGH (No. 5,) MUNGAL SINGH (No. 6,) MYAN KHAN (No. 7,) GOORRODUTT SINGH (No. 8,) MUHTAB SINGH (No. 9,) KABUL SINGH (No. 10,) MUTEERAM MISSER (No. 11,) AND BAHAL SINGH (No. 12.)

Midnapore.

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and others.

CRIME CHARGED.—Dacoity attended with murder and wounding, &c. in the house of the prosecutor on the 9th September, 1856.

Committing Officer.—Mr. G. Bright, magistrate of Midnapore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 11th December, 1856.

Six prisoners convicted; on strong circumstantial evidence. Two acquitted; one of whom was ordered to be proceeded against under Regulation VIII. of 1818. Section 10.

*Remarks by the additional sessions judge.*—Poornanundo Surrungee, the prosecutor, is a person of considerable wealth and influence, residing at Rohinee twenty-six miles south of Midnapore, several members of his family reside with him, and their joint residence is composed of detached buildings with a Thacoorbaree adjoining. On the night of the 9th of September last, while he was away from home, his house was attacked by a body of eight or nine men carrying lighted torches and armed with pistols and swords, who broke into the premises; rifled the "malkhaneh" of some 7,000 Rs. worth of gold and silver jewel-

lery, silver-plate, and other things, besides a large sum in money; shot one person, (who died shortly of the wound,) and cut down another, and finally got off unmolested. The chain of evidence which connects the eight prisoners at the bar with this offence was gathered at the first from two independent sources, and is complete and perfect in every detail and particular, owing to the promptitude and intelligence with which the matter was taken up and handled by the Raimobundah and town of Midnapore police.

Notice of the dacoity was at once forwarded to the thannah at Raimobundah, with the addition that it had been committed by *up-country* *Seikh sepoy*s; and on receiving this notice the darogah of Raimobundah thannah wrote to communicate the circumstances to the sudder darogah at Midnapore. But, before this intelligence had become known, five of the prisoners\* with

another not present, had been taken up on suspicion at a place called Malumcha by the chowkeedar of the place, who had found them shirking observation in a house on the outskirts of the village. The chowkeedar reported their arrest to the *phauree* burkundaz, and the *phauree* burkundaz sent them in to the sudder thannah, where the darogah saw, spoke to, and released them. The arrest by the chowkeedar was on the 10th September, and the prisoners were released again either that night or the following morning.

Almost as soon as he had let the prisoners go, the sudder darogah received the communication from Raimobundah above alluded to, when he at once set to work to recapture the six men who had been before arrested, as also all others answering the description of the suspected parties; five of the six prisoners of the 10th September, were soon re-apprehended on the 12th and 13th, and their three accomplices (Nos. 7, 10 and 12,) also on the latter date, while lurking about in the neighbourhood of the town of Midnapore, in and about the Gope jungle. On some of the prisoners was found a large portion of the stolen jewellery; on others cash to a considerable amount; on two nothing.

The gang were all certainly collected at Midnapore, up to the Saturday preceding the dacoity, which occurred on the night of Tuesday the 9th September. That same day (Saturday) they crossed, nine in number, the ferry at Kunkurbuttee, which is a

road south of Midnapore, on the road to prosecutor's village. That night the party arrived and halted at Châtdhur, six miles

south of Midnapore, and four from the Kunkurbuttee Ghât, and were seen and marked by several persons. They were also

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1857. seen to leave the next morning going south-west in the direction of Rohinee. On Sunday they reached and were seen at
- March 9. Wts. Nos. 39, 40 and 41. Logurshoolee (or Nodosoolee) sixteen or eighteen miles south-west of Midnapore, and eight or ten north-east of Rohinee. The following morning (Monday the 8th September,) they were watched leaving for Rohinee westward, or southwestward. The person at whose house they passed the night at Logurshoolee (Latchumun bearer witness No. 40,) recognises the prisoners as the persons he received at his house that night. On the Monday morning the party were again seen near Nichinda, which is between Nodosoolee and Rohinee. Witness No. 42, declares he distinctly recognises the prisoners as the men he then saw. The same day (Monday) they were seen at Dhangurree, three or four miles only from Rohinee by three persons; and on the following day, (Tuesday morning) at a place called Kasheedoorga, which is two miles only from Rohinee, north, and between that place and Dhangurree. The party were asked as to where they were going, when they replied with abuse. They were also seen, on the Tuesday at a place called Doodkource four or five miles north of Rohinee in the direction of which they were proceeding; and the person who saw them (witness No. 60,) recognises prisoner No. 12, as one of the party.
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- Wts. Nos. 42 and 43.
- Wts. Nos. 44, 45 and 46.
- Wts. Nos. 47, 48 and 49.
- Wt. No. 49.
- Where the men passed the night at on Monday has not been ascertained; but the day before the dacoity two of the party, separating themselves from the rest, paid Rohinee a visit, evidently, for the purpose of learning the plan of the house they meant to attack, for they went to the prosecutor's house, and got from his brother some food and permission to rest themselves there. These were prisoners Nos. 8 and 11, who were seen while paying this visit by witnesses Nos. 1, 22 and 29. The first named witness, who was not forthcoming in my court, but whose deposition on oath before the magistrate has been duly sworn to by the person who took it down, detected the prisoners Nos. 8 and 11, on the 8th, while sitting in the Thacoobaree questioning a child about the premises, and also recognised them as with the dacoits, while attacking the house the following night. Witness No. 29, saw also the day of the dacoity two more of the prisoners Nos. 9 and 10, walking a little apart from the village in conversation with three up-country men residing at the place. These men have not been produced, which perhaps they should have been, as their evidence, if inclined to be communicative, might have thrown further light on the matter.

After committing the dacoity, the gang at once returned with their booty towards Midnapore. They were seen near Choondpara on their retreat towards morning on the 10th

Wts. Nos. 50, 51 and 52. by three persons, one of whom accosted them, when they turned upon him and frightened him. On the Wednesday six of the nine (three having apparently travelled separately) reached Malumcha, six or eight miles north of Rohinee on the road to Midnapore, and put up in the Aleenuggur *tolah* at the house of witness No. 55, witness No. 54, seeing them go in there. Witness No. 55, did not like their appearance, and feared to harbour them, and quietly requested the chowkeedar to get them away from his house. The chowkeedar (witness No. 56) promptly attended to the call; went to No. 55's house; and suspecting something was wrong about them as they avoided going, as is usual with travellers, into the Malumcha bazar, but were apparently anxious to conceal themselves in the outskirts of the villages gave immediate notice of the party's arrival, and his suspicions regarding them to *phauree* burkundaz Ramtor Wukeel (witness No. 57).

The burkundaz was on the spot immediately, and on being told by the prisoners they were returning from a pilgrimage to Juggernath *en route* to Midnapore, at once saw the story was a false one, *that* not being the road for persons so to travel, and sent the men with a sufficient guard to the sudder thannah at Midnapore. These were the prisoners Nos. 5, 6, 8, 9 and 11, and another not now in custody. At the time all this occurred at Malumcha, the news of the dacoity at Rohinee the night before, had not been received there.

All the property found on the prisoners, has been fully and satisfactorily recognised as the prosecutor's; and the jewellery is undoubtedly of local manufacture. On prisoners Nos. 7, 8 and 10, was found a very large portion of the silver and gold ornaments and jewellery, cloths, &c., plundered from the prosecutor. On prisoners Nos. 6, 9 and 11, large sums of money; and besides on No. 11, a quicksilver partly defaced image, known to have been prosecutor's. On prisoners Nos. 5 and 12, was nothing; but the former was, it will be remembered, not only with the party throughout, but arrested in company with the prisoners Nos. 6, 8, 9 and 11, while both prisoners were seen with the gang,\* and

\* Wits. Nos. 37, 38, 40, 42 and 60. recognised afterwards as seen with them previously. No. 12, is besides first cousin to prisoner No. 8.

The previous history of all the prisoners is to be found in the English official correspondence with the record, corroborated by their own free admissions, and the defence they made when arrested; and when required to explain their movements and how they became possessed of the valuables found upon them

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go far to support the case for the prosecution and to fix the crime charged against them. Prisoner No. 5, when first taken up declared he and *prisoner No. 11*, had come to the Midnapore district for employment, but getting none had got as far as Gopeebullubpore (near Malumcha) on their way to Juggernath on a pilgrimage, *when they were joined by prisoners Nos. 6, 9 and 10*, (No. 10 was not, it will be remembered, seized amongst the six;) and the next morning prisoner No. 10, having parted company, they were arrested. Prisoner No. 6, gave the following account of himself when first apprehended. He said all the money found on him was his own, which he had saved at Dinapore with his regiment; that three months ago he took leave to go to Juggernath, *that he went there*; and that he was returning from Juggernath when he was seized with prisoners Nos. 5, 8, 9 and 11; prisoner No. 7, also claimed all the gold and silver ornaments, jewellery, cash, clothes, pistol and sword, found on him as his own. He said he was a discharged sepoy, and had got it in plunder in the Santhal campaign. He stated he had come to Midnapore in search of employment *with all the other prisoners*, (it will be remembered he was not arrested with those at Malumcha,) and that they were all leaving for Calcutta (most probably true) when they were taken up by the police. Prisoner No. 8, declared also the women's gold and silver ornaments, part of a silver *hookah*, &c. &c., found on him, as also the sword was his own private property, which he had brought *from home* with him *from Puttiala*; that he was a sepoy on leave; and that he had been to Juggernath *with prisoner No. 6*; prisoner No. 9, said the money and sword found on him were his own, that he had been lately a burkundaz on Mr. Ward's establishment at Hooghly, but had left it to go to Juggernath, that prisoners Nos. 6, 8 and 11, joined him at Gopeebullubpore, and that he and they were arrested near that place as described before. Prisoner No. 10, on whom were found a quantity of women's gold and silver ornaments, a silver *hookah* bottom, a sword, and a pistol, declared the sword only was his, *and he did not know to whom all the other things belonged*. He said he was a discharged sepoy from a regiment at Dinapore on his way as a pilgrim to Juggernath, that at Gopeebullubpore *No. 8 joined him*, (it will be remembered prisoner No. 10, is not one of the six seized together at Malumcha,) and had persuaded him to take charge of all the valuable property found on him, (which belonged, said prisoner No. 8, to his brother prisoner No. 12,) and to turn back home (to Puttiala) again, when they were seized. They were arrested, it will be remembered at different places *and not together*. Prisoner No. 11, was one of the six arrested at Malumcha. He claimed the large sum of money (Rs. 49,) and the quicksilver idol as his own. He was, he said, a sepoy a short time back at

Dinapore, but got leave *with prisoner No. 12*, to go to Juggernath. They were going through Midnapore to Juggernath, he added, when arrested. The road on which the travellers were travelling is *not* the road from Midnapore to Pooree or Juggernath, but a long way from it. Prisoner No. 12, was arrested alone near Midnapore while lurking in the Gope jungle. The account he gave of himself when taken up was that he had been attached to a regiment at Dinapore, that he had got his discharge five months before, that he then took service with Mr. Ward at Hooghly as a dacoity office burkundaz, that he soon got discharged there also, that prisoner No. 11, started with him from Hooghly to go to Juggernath, and that he had just arrived at Midnapore *en route* to Juggernath, when he was apprehended.

It will be seen how utterly absurd and contradictory were the stories told by the prisoners *at the time*. Before me their defences are still further inconsistent, improbable and contradictory. No. 5, prisoner says now he *had been* to Juggernath and was returning; that he left his home in Puttiala to seek service at Hooghly, then that he left home to take service as a sepoy at Benares, and afterwards leaving Benares wandered he does not know where, and that he fell in with the other prisoners on his return from Juggernath. No. 6, prisoner a native of Puttiala, who is a sepoy in the 7th regiment N. I. on leave, got his leave, he says, to visit Juggernath, where he travelled alone, being joined by the five sepoys who were taken up in his company (Nos. 5, 8, 9 and 11, prisoners and another not in custody now) just before he was arrested on his return. The cash found on him (36 or 37 Rs.) is, he says, the savings from his pay as a sepoy. He denies having been accompanied to Juggernath by prisoner No. 8, who when arrested said they had gone to Juggernath together. No. 7, prisoner is a Loodianah man, and a discharged sepoy of the 7th N. I. He maintains again that the jewellery was his share of the plunder at Mohaishpore (in the Santhal country;) and that the 210 Rs. cash found on him was the sum he had saved in service. His object in coming to Midnapore was, he says, to seek employment and to visit his brother in the Shikawatti regiment (which left Midnapore for Burmah a long time ago,) he repudiates his statement in arrest altogether, though all of that statement he still adheres to except as to having come to the Midnapore district *with all the other prisoners*. No. 8, prisoner, from Puttiala, *is a deserter from the 7th N. I.* He got all the valuables found on him, he says, in plunder last year. He declares first he had been to Juggernath with prisoners Nos. 6 and 9, and three others, and then immediately afterwards that he had gone there alone. The statement he made on his arrest to the darogah was, he says, the darogah's own composing, and not his

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dictating. The 180 Rs. cash found on him is, he declares, his own. He says, first the jewellery, &c., found on him he brought with him from his home at Puttiala, and then again that he found it in the Santhal country. He denies the pistol found on him *was* found on him. He states the money is his, the savings of nine months' service in the regiment (180 Rs. !) and then that it is *not* his; and his defence is almost incapable of being recorded. He concludes by saying prisoner No. 12 is his brother, but that they did not visit Juggernath together; and met for the first time when both taken in arrest to the thannah on the 13th September last; No. 9 prisoner is also, it appears, a deserter from the 7th N. I. but he denies this, and says he never was in any service though a native of Loodianah, (where I have ascertained the 7th N. I. got their Seikh levy) until he was employed by the dacoity commissioner at Hooghly. The 55 Rs. 8 annas found on him were savings from his short service *there*. He left service at Hooghly to go to Juggernath. He went alone, and he did not go alone to that place but with prisoner No. 8; prisoner No. 10 now declares *nothing was found on him* when apprehended. He admits he is a discharged sepoy of the 7th N. I. He was on his way to Juggernath, he says, alone when he was seized. This man is also from Pattiala, and his story is now entirely different from that he told at first; prisoner No. 11 is, he admits, a deserter from the 7th N. I. at Dinapore. He deserted he says to pay Juggernath a visit and went there alone. He is a native of Loodianah. He denies that he ever said he was going to Juggernath, or that prisoner No. 12 went with him. The money he saved as a sepoy, and the quicksilver *Hindoo* image, he got in Cashmere when in Golab Singh's service; prisoner No. 12 is, he says, now a discharged sepoy from the 7th N. I. and a first cousin of prisoner No. 8. He never went to Juggernath, and only fell in with his cousin after their arrest. Was in service with the dacoity commissioner at Hooghly, and left it with prisoner No. 8 for Juggernath. He says next he was going to Juggernath alone. He denies that he ever said when first arrested that he was going to Juggernath in company with prisoner No. 11 who joined him at Hooghly.

The prisoners have cited a great number of witnesses chiefly to character, all officers, Native and European of the 7th regiment at Dinapore. The attendance of these witnesses has been demurred to by the local authorities, and the testimony they are called to give is immaterial to the issue of the present trial. Two witnesses summoned from Hooghly, however, by prisoner No. 9 to speak to his character while in Government service there, have appeared, and the evidence they give is to the effect that the prisoner was convicted of allowing a dacoit to escape from his custody when on guard over him at Hooghly, and

severely punished, for what may now be considered to have been not mere negligence.

This gang, I have no doubt whatever, arranged their plans with much deliberation, and came down on a marauding expedition to Midnapore either together or in concert. All the prisoners are in some way or other intimately connected and acquainted, and it is much to be regretted that it has been impossible to find who was the ringleader of the party, and who fired the fatal shot that killed Dunadun Doss, during the perpetration of the dacoity at prosecutor's house in Rohinee. Either would have been fairly subject to capital punishment. As it is I convict all the prisoners of having been concerned equally in the dacoity with murder on the 9th September last; and I recommend that all be sentenced to imprisonment with hard labor for life in transportation. The sudder darogah has behaved admirably in his management of this case, and I intend on the issue of this reference being known, to offer a substantial reward to the Raimobundah burkundaz Ramtu wukeel, and the Malumcha chowkeedar Roop Singh, witnesses Nos. 56 and 57 of this calendar.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Against the prisoners Nos. 7, 8, 10 and 11 the second count is fully proved. The property found in their possession has been identified by the witnesses for the prosecution as prosecutor's. There is also strong presumptive proof against them as regards the 1st count; for prisoners Nos. 8 and 11, were recognised by witnesses Nos. 1 and 29 as being the two Sikhs who came to the prosecutor's house on the day of the dacoity, and were heard making enquiries regarding the owner's property, and the inmates, and means of defence. No. 10 was also seen with No. 9 by witness No. 29 about the village with some of the villagers.

Prisoners Nos. 7 and 11 were also recognised by witness No. 39 as two of a party of up-country men who, on the Sunday previous to the dacoity, stopped and slept at Luchmun Behras, and No. 11 is identified by witness No. 49 as one of a party of Nugdees going south who stopped at his house, and demanded fire to light a *hookah*, while his companions went on.

Though the property found on the prisoner No. 9, consisting of cash, cannot be identified, yet there are sufficient grounds on the record for concluding that he was concerned in the robbery, and that the property found on him belongs to the prosecutor, for he was seen in company with prisoner No. 10 about the village on the evening previous to the dacoity; his statement before the darogah shews that he had been to Mohrbunj, and Goopeebullubpore, in the neighbourhood of the prosecutor's house, and which are *not* on the road he professed to be travelling, i. e. that from Juggernath; and he was apprehended with

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five others, on some of whom cash and property, the latter identified as the prosecutor's, was found by the chowkeedar of the Malumcha bazar.

On the prisoner No. 6 cash was found; and he is recognised by witness No. 36 as one of a party of up-country men proceeding south, who the Saturday before the dacoity applied to him for a lodging, and remained outside the house, as witness was unable to accommodate them. This prisoner also admits having been to Mohrbunj and Gopeebullulpore, and was apprehended by the chowkeedar, in company with other prisoners, at Malumcha; further, this statement is corroborated by the statement of Goroo Dutt, prisoner No. 8, who acknowledged before the darogah that he and the other prisoners went together to and from Juggernath, and returned via Gopeebullulpore.

The prisoners, Nos. 5 and 12, deny the charge, and no property was found upon them. The only credible testimony to their forming part of the gang who committed the dacoity, is the evidence of Luchmun Behra at whose house they halted on the Sunday previous to the robbery; but this testimony is of itself insufficient for their conviction. Other witnesses speak to recognising the whole gang; but they only saw them passing by, and therefore their testimony to recognition is hardly sufficient. Several of the witnesses who clearly identify the prisoners before the sessions, could only state to the magistrate that the prisoners were *like* the up-country men they had seen. It is true that Futteh Singh prisoner No. 5 was apprehended with others by the chowkeedar at Malumcha, and is named by Goroo Dutt prisoner No. 8 as having been of the party to Juggernath; and admits in his examination before the police that he and Moty Misser had been to Mohrbunj and Gopeebullulpore, at which latter place they fell in with the other prisoners. But as no property was found on him, we do not think the evidence sufficient for his conviction.

We therefore convict the prisoners Nos. 6, 7, 8, 9, 10 and 11 of the charges on which they stand committed; and sentence them, as recommended by the additional sessions judge, to imprisonment for life in transportation beyond sea; and acquit the prisoners Nos. 5 and 12.

Though there is no legal proof to convict the prisoner No. 5, of the dacoity, it is apparent from the record that he was apprehended under very suspicious circumstances, in company with others, four of whom have been convicted of committing this dacoity, and the accounts he has given of himself are contradictory and unsatisfactory. The Court direct that he be proceeded against under the provisions of Section 10, Regulation VIII. of 1818.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

SEETUL MANNA (No. 2,) KASHEE SINGH (No. 3.)  
KEENOO SINGH (No. 4,) GOUR SINGH (No. 5,) AND  
LUKHEE SINGH (No. 6.)

Midnapore.

CRIME CHARGED.—1st count, Nos. 2, 4, 5, 6 and 7, dacoity on 18th October, 1843 in the house of Radhoo Singh inhabitant of Amdooly Bushunt pore, thannah Purtab pore; 2nd count, Nos. 2, 4, 5 and 6, and 1st count, of No. 3, dacoity on 15th July, 1849, in the house of Khosal Putthur inhabitant of Chacheeara, thannah Purtab pore; 3rd count, Nos. 2, 4, 5 and 6, and 2nd count of No. 7, dacoity on 6th December, 1850 in the house of Anundee Sawant, inhabitant of Chuck Hurreerampore, thannah Purtab pore; 4th count of Nos. 2 and 5, and 2nd count of No. 3, dacoity on 25th May 1852, in the house of Dulal Doss, inhabitant of Kapashberreah, thannah Pudim Bosaon; 5th count of Nos. 2 and 5; 4th count of Nos. 4 and 6 and 3rd count of Nos. 3 and 7; having belonged to gangs of dacoits.

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SEETUL  
MANNA and  
others.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent, assistant dacoity commissioner and joint-magistrate of Midnapore.

Prisoners  
convicted, and  
sentenced to  
transporta-  
tion, on the  
strength of the  
direct and cir-  
cumstantial  
evidence for  
the prosecu-  
tion.

Tried before Mr. G. D. Wilkins, additional sessions judge of Midnapore, on the 10th December, 1856.

*Remarks by the additional sessions judge.*—All the prisoners but Kashee Singh, No. 3, are charged with the dacoity at Amdooly Bushunt pore on the 18th October 1843. The approver witness Muddoo Pokurrea was concerned in the dacoity, and confessed to it some time before the prisoner's arrest, when he denounced, as he now does again on oath, all the prisoners as his accomplices. He gives to-day the details of the affair, which are, however, not remarkable, exactly as at first, No. 5, witness swears to the occurrence of the dacoity as reported the next day, and to prisoner, No. 4, having been *then* suspected of having been engaged in it. Prisoners Nos. 4 and 5, were arrested at the time with their brother Kashee No. 3, when the proof was insufficient against any of them, and all were released, the two first by the magistrate from the thannah, and the last (who has therefore not been indicted on this count) by the sessions judge. On the 24th July, 1856, one Mohun Sahoo, now a convict in transportation, also confessed to this dacoity, and named in it the prisoners Nos. 4, 5 and 6, besides their relative Kashee. On the prisoner's recent arrest he picked them out



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from a number of others as the persons he had before alluded to. Moreover the next day but one after the dacoity, a person arrested on suspicion, Gokool Mahapatur, declared in a confession he then made, *Kashee and two persons being with him* (prisoners Nos. 4 and 5) were in the affair. Prisoners, Nos. 3, 4 and 5, always lived together.

The second dacoity was on the 15th July, 1849 at Chachoeera, and all the prisoners but No. 7, are charged with having committed it. There is here too only the direct evidence of one approver witness, Muddoo Pokurrea, who has given the incidents of the affair different before me from those he gave at first, adding too now for the first time the name of the prisoner Doobraj Rai to those of prisoners, Nos. 2, 3, 4, 5 and 6, denounced in his original confession. The offence was reported the day after it was committed *as an attempted theft only*, and not as a dacoity and there is no corroboration except the confession of the Mohun Sahoo already alluded to recorded as to this dacoity on 18th July, 1856.

Prisoners, Nos. 2, 4, 5, 6 and 7, are charged on the 3rd count with participation in the dacoity at Chuck Hurreerampore on the 6th December, 1850. The approver Muddoo in his confession to this dacoity, recorded before any of the prisoners were apprehended, denounced in it all the prisoners now charged with the offence and the prisoner Kashee, (who was acquitted by the sudder court on 21st March, 1851). To-day he gives his evidence to the same effect, both as to the names and identity of his accomplices, and as to the particulars that occurred. The case was immediately reported and enquired into. The above-mentioned Kashee Singh was tried and convicted of the offence at the sessions, but afterwards released on appeal. Four of the other prisoners were suspected and ordered to be seized (Nos. 4, 5, 6 and 7,) but two evaded arrest, while the two who were arrested (Nos. 6 and 7), were eventually released without committal to the sessions for defect of evidence.

On this 3rd count, the confirmatory evidence is as follows. The brother to the owner of the house attacked, reported the dacoity the following morning at the thannah, and mentioned that the owner of the house himself and another brother had been much injured by the ill-usage they had received. The police went and took the owner's deposition on the spot the same day, the 7th December 1850, when he affirmed he had recognised amongst the robbers, the prisoners Nos. 4 and 5. He has now given his evidence as a witness (No. 2,) before me to precisely the same effect, as has also a brother of his witness No. 3, who recognised in the act at the time the three prisoners, Nos. 4, 5 and 6 as he deposed to the darogah on 8th December, 1850, within thirty-six hours of the dacoity, and as he has to-day again repeated before me. Witness No. 6, proves the

fact of the enquiry. He is a darogah of upwards of twenty years' standing in the district and of an unblemished reputation. He states that prisoners, Nos. 4, 5, 6 and 7, were at once charged on suspicion as they had been ascertained to have all assembled that night at their relative, prisoner No. 3's house. Prisoners, Nos. 4 and 5, made their escape, but Nos. 6 and 7, were seized, but *not* with any of the prosecutor's property upon them. On 19th December, 1850, this witness made I find precisely the same condemnatory statement against the prisoners. He says all but two are near relatives, are well known thieves and dacoits, and the terror of the neighbourhood, which always remains undisturbed when they are in trouble.

But there is still more on this count. On 22nd July, 1850, Mohun Sahoo, now a dacoit undergoing transportation, confessed to this crime, and named as associated with him in it all the prisoners; and, after they were seized, he was confronted with and identified them from amongst a crowd of persons. The evidence on this count, seems ample against, at all events, the prisoners Nos. 4, 5 and 6.

On the 4th count, are charged only the prisoners Nos. 2, 3 and 5; and the evidence direct and circumstantial would appear ample against the two former. The first approver witness, names in accordance with his original confession all three, and he besides repeats the incidents of the affair with sufficient accuracy. The case was duly reported and enquired into at the time. Witness No. 4, also an approver, denounced prisoner No. 2, in this affair as far back as 23rd June, 1855; and again now repeats in evidence his previous denunciation, giving also his version of the incidents as at first. This second approver not having been denounced by the first approver in his original confession is accounted for by their being closely related. The day after the dacoity, one Noboo Doss was seized while making off with a portion of the plunder; confessed, and named as his accomplices amongst others, prisoners Nos. 2 and 3; and 5th July, 1852, one Soonder Kamar, a ryot, deposed to prisoners Nos. 2 and 3, having been spoken of at the time of Noboo's seizure by them as his accomplices in the dacoity. One Mudoo Sawunt also heard prisoner No. 2, and the approver Pershad, named by Noboo Doss, when seized with the plunder before being sent in to the police; Noboo's confession led to the arrest of others, of whom two also confessed on being apprehended, and on the same day, the 26th May, 1852, both denounced the prisoner Kashee No. 2, and repeated their statements to the deputy magistrate. On the 27th May, 1852, one Anundee Boonya also confessed to this dacoity, and implicated Kashee. Kashee could not be found at the time, but was afterwards seized, and was imprisoned for three years for being a notorious bad character. The gangs which committed these dacoities were small

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and separate, but prisoner No. 2, was undoubtedly a ring-leader under whom they mostly served. That Kashee prisoner No. 2, was also a sirdar dacoit, was proved in two cases in which he was tried, in this and the zillah judge's court on the 6th December and 15th October, 1856, respectively.

Prisoners Nos. 3, 4 and 5, are brothers. Prisoner No. 6, is the son of prisoner No. 4's mistress; and prisoner No. 7, is his brother-in-law. Prisoner No. 2, is not connected with the others. Prisoners Nos. 3 and 4, were arrested for a dacoity, twenty-two years ago. In 1836, they were denounced by three confessing associates in a burglary. In 1838, they were twice arrested for two burglaries. In 1843, prisoners Nos. 3, 4 and 5, were arrested for the dacoity, charged in the first count of this calendar. In 1846, prisoner No. 3, was twice arrested and once punished for making his escape from the *hajut* guard. On one of the above occasions, prisoner No. 4, was also apprehended with his brother. In 1847, prisoners Nos. 2 and 4, were taken up on suspicion. In 1849, prisoners Nos. 2, 3 and 5, were arrested for the dacoity at Pertaubpore, not charged in this calendar on being compromised by a confessing associate. In 1849, prisoner No. 6, was convicted of and punished for burglary. In 1850, prisoners Nos. 3 and 4, were both arrested for a dacoity. In 1851, prisoner No. 5, was taken up for a burglary. In 1852, prisoner No. 2, was arrested on a charge of burglary, confessed, but was acquitted. I have already shewn that prisoners Nos. 3, 4, 5, 6 and 7, were arrested in the Chuck Hurreerampore dacoity. In the same year prisoners Nos. 2 and 3, were apprehended for the dacoity charged in the 4th count, as already mentioned. It seemed impossible to convict them, and their course seems to have run on almost unchecked for nearly a quarter of a century, although it was notorious (witness No. 6,) that the country side was only free from crime when they were in durance under trial.

Prisoner No. 2, denies every charge. He says the approver witness Mudoo, owes him a grudge, in that he (prisoner) once thrashed him by the orders of the gomastah of the village for an intrigue with the daughter of one Pershad Sahoo. He says he has no quarrel with the other approver witness or the transported convict Mohun Sahoo. He calls witnesses not to prove this quarrel with Mudoo but to speak generally to his character. They are nine in number. The evidence of one was doubtful; two knew nothing about him; three spoke badly of him; and three he refused to examine.

Prisoner No. 3, also denies every thing, and declares he has a quarrel also with Mudoo, having given evidence once against him in a theft case. It appears he gave evidence to character for some persons who had been accused by Mudoo the approver, and that Mudoo got imprisoned for three months for bringing a

false charge against them. The prisoner has been five years off and on in jail he says, and can name no witnesses to speak for him on any point.

Prisoner No. 4, denies and pleads Mudoo's enmity. He too calls witnesses to character only, four in number. One knows nothing about him; one says he is a rogue; and two he would not examine.

Prisoner No. 5, denies his guilt. *He* is not acquainted with the approvers. He has two witnesses to character who give him a bad one.

Prisoner No. 6, pleads *not guilty*. He too was on bad terms with the approver Mudoo. His witness No. 14, does not support his special plea in any way, and the rest he declined examining.

Prisoner No. 7, pleads simply a denial and the approver Mudoo's quarrel with prisoner No. 6, his brother-in-law. His witnesses say nothing for him on any point.

I consider the 1st count to be proved to a certain extent against some of the prisoners, but not sufficiently for conviction by itself. Count 2nd is not proved. Counts 3rd and 5th, are satisfactorily proved against prisoners Nos. 4, 5 and 6, and counts 4th and 5th, against prisoners Nos. 2 and 3. I acquit and release prisoner No. 7, and recommend that the rest be sentenced to imprisonment with hard labor for life in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The 3rd count is satisfactorily proved against the prisoners Nos. 4, 5 and 6, by the evidence of the witness (approver) No. 1, and the evidence of Anundee Sawunt, witness No. 2, and his brother Sodaram, witness No. 3. In December 1850, the day after the dacoity, Anundee deposed to the darogah that he had been beaten by the dacoits, and among others had recognised *Gour*, prisoner No. 4, and *Kanoo*, prisoner No. 5; and he repeated this statement before the magistrate. Sodaram also recognised *Kanoo* No. 4, *Gour Singh* No. 5, and *Lutchee Singh* No. 6.

The 4th count is also proved against the prisoners Nos. 2, 3 and 5, by the evidence of the approver—witnesses, corroborated by the confessions of Noboo Doss, Birjahuri, and Anundee Bhoorun, arrested at the time.

We convict the prisoners Nos. 2 and 3, on the 4th and 5th counts, and prisoners Nos. 4 and 6, on the 3rd and 5th counts; and prisoner No. 5, on the 3rd, 4th and 5th counts; and sentence them, as recommended by the sessions judge, to transportation for life.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND LALMOHUN TELEE

*versus*

Hooghly. SREEMUTTY TARAMONEE KYBURTNEE.

1857.

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Case of  
SREEMUTTY  
TARAMONEE  
KYBURTNEE.

Prisoner convicted; her confessions being corroborated by other independent evidence.

CRIME CHARGED.—1st count, wilful murder of Sreenauth Telee Chhokerah, for the sake of his ornaments; 2nd count, being an accessory before and after the commission of the murder; 3rd count, privy to the fact.

Committing Officer.—Moulvee Abdool Luteef, deputy magistrate of Jehanabad.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 30th December, 1856.

*Remarks by the additional sessions judge.*—The charge against the prisoner is that on the 27th October last, she, at the *haut* at Monohurpore, induced the deceased, Sreenauth Telee, a boy thirteen years old, and son to the prosecutor, (who was there with some ornaments on his person and some money in his hand for the purpose of buying *couries*,) to leave the *haut* with her, to go to Soodursunpore, where she first robbed and then murdered him. There is no direct evidence; but the prisoner freely confessed, first to the police, and then to the deputy magistrate of Jehanabad, to having been to some extent an accomplice in the crime, and to the full extent to having been an accessory after the fact; and the circumstantial evidence which is very complete is to this extent only.

The prisoner confessed on both occasions to having decoyed the deceased from the Monohurpore *haut* to Soodursunpore, which is a gun-shot distant only from it, with a promise to deal with him there for *couries*, she then, she said, took the deceased to one Ramdhun bearer (a lover of her's it would appear) who was at the time tending his cattle away from home and who desired her to go to his house and procure *couries* from his niece there, she got the *couries*, and in company with the niece returned to the place where she had left Ramdhun and deceased, but, not finding them there, went on towards her own house, thinking they might have proceeded *there*. On the way she met Ramdhun in the act of drowning the deceased in a tank, she said she remonstrated, but was told to hold her tongue, and that the boy was dead. She admitted the prosecutor came and asked her for her son when she denied all knowledge of him or of what had become of him. *The share of the boy's ornaments, &c. Ramdhun had promised her, he never, she said, gave her.* That night Ramdhun came to her house and asked her to go

and help him to dispose of the body. She did go, *though by compulsion*, and did help in getting the body from out the tank, where it lay for the purpose of carrying it away, when the village chowkeedar detected them in the act, caught *her*; and Ramdhun effected his escape. This is the substance of the prisoner's defence before the deputy magistrate, and that it was entirely free and voluntary, is proved by the difference in her own favor there is between it and the admissions she made to the police. To *them* she said, besides the above that when the murder had been perpetrated in her presence, she demanded from Ramdhun *her share of what he had stolen from the deceased's person*. She said nothing on that occasion of having gone out at night with Ramdhun to help him to get rid of the body by compulsion; and the complicity of the two Munduls, witnesses Nos. 12 and 16, both in the disposal of the body, and in the concealment of what had occurred from the prosecutor, was affirmed before the deputy magistrate *for the first time*.

The evidence is all circumstantial, Goburdhun chowkeedar, witness No. 1, in his examination in the mofussil on the 29th October, and in his subsequent deposition before the deputy magistrate, said he had commenced a search for the deceased, as soon as he had heard the prisoner had carried him off with her from the Monohurpore *haut*, and that he was missing; and that he had overheard that night Ramdhun calling the prisoner to go and help him to get rid of the body, when he had followed and seized the prisoner, while her accomplice effected his escape. Part of this story seems, I must confess, improbable, but it has been told consistently from first to last, and agrees entirely with the prisoner's confessions. On one point, this witness disagrees with the prosecutor, viz., as to having pointed out the corpse to him (the prosecutor) the following morning to be recognised, when it was recognised at once. The evidence of witness No. 12, was at the thannah also in accordance with the prisoner's confession. He stated that immediately on being seized by witness No. 1, she detailed all the circumstances of the decoying and subsequent murder precisely as she subsequently did in a more formal manner to the darogah. In his evidence before me, this witness has varied a little from his former statement. He now says the prisoner declared on her arrest she and Ramdhun had jointly committed the murder. Witnesses, Nos. 13, 14 and 15, prove the prisoners having allured the deceased away from the Monohurpore *haut* under a pretence of selling him *couries* at a cheaper rate than he could purchase them in the market.

The corpse was so much decomposed on its being brought in to Jehanabad that no *post mortem* examination was possible. The witnesses cited for the defence so far from clearing the prisoner in any way give damning evidence against her. They

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say she is a thief and a prostitute, and her demeanour before me was that of a most shameless and abandoned woman. She has been throughout the trial perfectly self-possessed; has constantly interrupted the proceedings, and has more than once threatened a witness testifying against her, and especially the witnesses she summoned herself. The police got notice of the crime from two sources the very morning after the murder. That same day the thannah mohurrir arrived at the village, and sent word to the darogah to come also. The darogah reached the place on the 29th, that same day recorded the prisoner's confession, and the statement of the chowkeedar, witness No. 1, and the following day the statements of the rest of the witnesses and the prosecutor's charge.

The prisoner complained to me that she *had been tortured*; and seeing some marks of violence on her person, I sent her over to the medical officer to be examined. To him *she described correctly the results* from a ruler having, as she said, been passed up her *vagina*. On her arms too were undoubtedly the marks of cords, and on her thigh the mark of a burn from, she asserted, a lighted torch having been applied there. The person, as far as I could gather from her statement, whom she charged with these outrages was the thannah mohurrir, Pannalall, a Brahmin. The marks of the cords may have been caused by her own violence when bound to prevent her escaping. The burn on the thigh may have been accidental, and the alleged violence to the *vagina* may never have been perpetrated. There is no proof in the matter, and still less any regarding it against the police officer abovenamed. Still it is not unfair to *suspect* that some violence *was* used towards the prisoner in the first instance by some one. The deputy magistrate ought to have seen the marks on the arms at least, and enquired from the prisoner what had caused them.

In concurrence with the law officer, I convict the prisoner on her own confession and on the evidence in the case, of having been an accomplice in the murder of Sreenauth Telee, and I recommend, under the precedent  
\* Reports S. N. A. 1855, II. 899. noted in the margin,\* that she be sentenced to be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner confessed to the police to having been present while Ramdhun was endeavouring to drown the deceased, who was struggling in the water. To the magistrate, she stated that she saw Ramdhun in water waist-deep, endeavouring to conceal the body. On both occasions she admits to having called the boy from the bazar, but without any evil intent, and to having consented to conceal the murder, (she stating her cognizance of it being a murder) on promise of receiving a share of the property. She confessed also to having

denied all knowledge of what had happened to the boy when she was questioned by the deceased's father as to him, and to having assisted Ramdhun, during the night to recover the body from the tank, where it had been concealed, in order to take and throw it into the river. Further, that while attempting to drag the body along, she and her companion were surprised by the chowkeedar, who seized her, and to whom she confessed. Before the sessions judge she repudiated her confessions, and stated that she had been beaten (*marpeet*) by the police. The sessions judge sent her to the civil surgeon, to whom she appears to have described what was done to her; his opinion, however, on the subject is not definite, but rather in disproof of her assertions. We consider, under all the circumstances, that the prisoner's confessions, corroborated as they are by the evidence of the chowkeedar and other respectable villagers residing near the spot, contain generally a true statement of her complicity; and we convict her of being an accomplice in the murder, and sentence her to imprisonment for life with labor suited to her sex in the zillah jail.

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Case of  
SREEMUTTY  
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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND MUSST. SIFTEE

*versus*

TOTA AHIR (No. 1, APPELLANT,) GHEENA AHIR  
(No. 2,) AND JEHTUB AHIR (No. 3.)

Sarun.

CRIME CHARGED.—Culpable homicide of Imrit Ahir, husband of Musst. Siftee, prosecutrix.

1857.

Committing Officer.—Mr. W. F. McDonell, magistrate of Sarun.

March 13.

Tried before Mr. H. Atherton, sessions judge of Sarun, on the 22nd December, 1856.

Case of  
TOTA AHIR.

*Remarks by the sessions judge.*—This is a case of culpable homicide, which I refer to the Court as I consider the prisoner, Tota, No. 1, who dealt the fatal blow deserving a sentence of at least fourteen years' imprisonment with labor in irons. It appears that the deceased, Imrit, was ploughing with Tota's bullock and his own under an agreement made by them, when Tota, followed by the other two prisoners, went to get his bullock back from him. Imrit refused as Tota had had the use of his for some days and it was now his turn to use Tota's. They came to words when, without any violence having been used by Imrit, Tota struck him a blow on the head with his *lattee*,  
Prisoner convicted on the direct evidence to the fact, and the testimony of the civil surgeon as to the cause of death.



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Case of  
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which fractured his skull, (Vide evidence of the civil surgeon.)

No. 7, Dr. A. Fleming.

The prisoner No. 2, also struck him on the wrist with his *lattee* while

prisoner No. 3, Jehtoo or Chuttoo, kicked and cuffed him when on the ground. This occurred on Saturday the 15th of November and the deceased died of the injuries received on the night of the Sunday following. The outrage was witnessed by

No. 1, Bukut.

,, 2, Mundoo.

,, 3, Hurra.

witnesses Nos. 1, 2 and 3, as well by the prosecutrix and the defendants have no proof in support of their denial. I record a sentence of

seven (7) years' imprisonment with labor in irons against prisoners Nos. 2 and 3. It is shown that all three are brothers, the sons of Sondan Ahir, though No. 2, here says Pursitan was his father, No. 3, calling himself before the magistrate and myself the son of Asman ; though, at the thannah, he said Sondan was his father.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence of three eye-witnesses clearly prove that prisoner struck deceased with a *lathee* on the head in a dispute about an agreement as to the loan of cattle to each other to plough with ; and that he fell and remained insensible till next night, when he died. It is also shewn that deceased did not attack or strike prisoner. It is clear from the civil surgeon's deposition that deceased died from the fracture of his skull. The prisoner's defence as to the deceased having died from ill-health is distinctly negatived by the surgeon's statement that the corpse was that of one who was in good health ; and it is not substantiated in any other particular.

We sentence the prisoner Tota Ahir to fourteen years' imprisonment with labor and irons in banishment.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

KORA GAZEE ALIAS KAROMUDDI (No. 10),  
AND SHORAMONY JALLIAH (No. 11.)

Tipperah.

1857.

CRIME CHARGED.—No. 10, wilful murder of Musst. Modoo Bibee, by the administration of drugs to cause abortion ; No. 11, accessory to the above crime before the fact.

March 14.

Committing Offier.—Mr. F. B. Simson, joint-magistrate of Noakhally.

Case of  
KORA GAZEE  
alias KARO-  
MUDDI and  
another.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 17th December, 1856.

*Remarks by the sessions judge.*—The deceased woman appears to have entertained an illicit connection with the prisoner, Kora Gaze (No. 10,) the brother of her late husband, and to have become pregnant by him. The propriety of his marrying her was suggested by other relatives, and acceded to by the prisoner, when the deceased started the objection that to be married in her then state of pregnancy would expose her to unpleasant remarks. If the witness, Modoo Bibee (No. 7,) who is the prisoner's sister, is to be credited, the deceased herself suggested that medicine should be given her to cause premature expulsion of the foetus. Accordingly the prisoner Shoramony Julliah (No. 11) prepared and the prisoner Kora Gaze (No. 10) administered one pill on Thursday and two on Friday, the effect of which was the patient's death on Saturday. The evidence of the sister, and of the deceased woman's daughter Bibee Jan, leaves no room for doubt that abortion took place prior to death.

Prisoners convicted; and severe punishment awarded, owing to the local prevalence of the crime.

In consequence of the stupidity of the acting darogah, the body of the deceased woman was not sent in to the sudder station until decomposition had advanced so far as to render a *post mortem* enquiry into the cause of death impossible. I observe that the joint-magistrate's attention has been directed to this point, and that the acting darogah has been reduced to his former and lower grade of police mohurrir.

The two first of these witnesses might, with propriety, have been made eye-witnesses of the fact, instead of appearing among the witnesses to the circumstances of the case. The evidence derived from them and their fellow-witnesses, seems to me

both clear and satisfactory. The woman's pregnant state, the

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KORA GAZEE  
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another.

connection which led to her pregnancy, the administration of the medicine, and its fatal consequences, are all brought clearly before the court. The more important evidence is derived from immediate relations of the prisoner Kora Gazez No. 10, his sister and his niece, and is therefore perfectly free from every suspicion of being exaggerated to his injury.

The prisoner Kora Gazez, No. 10, confessed at the thannah, but pleaded *not guilty* before the magistrate, I therefore pass over his mofussil confession as unsupported by subsequent admissions, and therefore as of doubtful value.

The prisoner Shoramony Julliah (No. 11) confessed at the thannah and before the joint-magistrate that, in consideration of a promise of three rupees, he prepared and delivered to the prisoner Kora Gazez (No. 10) three pills for the purpose of inducing abortion, and thus ridding the deceased woman of her burthen.

These confessions are open to no suspicion of being otherwise than voluntary, and are therefore valuable as evidence of the circumstances under which the deceased woman met with her painful death. They specify in detail the drugs used in composing the pills, two of which are of the most acrid nature, while a third appears to have been actual poison of some kind.

The prisoner Kora Gazez (No. 10) while denying to the joint-magistrate that he administered or had aught to do with the administration of medicine to the deceased, admitted the connection of its results. Before me his defence was limited to a simple denial. He declined calling any of the nine witnesses in attendance on his behalf.

The prisoner Shoramony Julliah (No. 11) denied in the sessions court having had any thing to do with the preparation of the medicine administered to the deceased. He said that his confession at the thannah, and even in the joint-magistrate's court was extorted from him by ill-treatment, a statement as untrue, no doubt, as it is improbable. The committing officer, Mr. Simson has, in fact, shown in this very case a strong desire to assist the prisoners to the fullest extent compatible with his duty, for although when informing them that he was about to commit them to the sessions court they declined to indicate any evidence they would desire to bring forward before the judge, he subsequently summoned nine witnesses to attend in consequence of the prisoner Kora Gazez (No. 10) petitioning him on the subject twenty-one days after the commitment.

The Mahomedan law officer acquits the prisoner Kora Gazez (No. 10) on the ground of the proof against him being insufficient for conviction. He convicts the prisoner, Shoramony Julliah (No. 11) of aiding before the fact in the culpable homicide of the deceased.

I differ from this *futwa* so far as it affects the prisoner, Kora Gazee (No. 10,) because it appears to me that the evidence of his own sister, and own niece is quite sufficient, when taken with the confession of his fellow-prisoner, to establish his guilt. I would therefore, convict him of the culpable homicide of the deceased, and the prisoner, Shoramony Julliah (No. 11) of being an accessory to the same before the fact.

When, recently, referring a trial\* of a similar description to the present, I recommended that a sentence of seven years' imprisonment with labor suited to her sex should be passed on the prisoner, the sudder court, on that occasion, made the following remarks.

\* Government  
versus  
Sreemoti Pudda, *alias* Puddee  
or Kalliemah.  
Dated the 25th July, 1856, No.  
242.

"The sentences hitherto passed by this court in similar cases have, it is evident, been too lenient to suppress this unnatural crime; and as we believe it to be one of common occurrence, and but seldom brought to light, we consider that a severer example is necessary for its suppression, than that which the sessions judge recommends."

"Concurring, therefore, with the sessions judge in convicting the prisoner of culpable homicide, we sentence her to 14 years' imprisonment with labor suited to her sex."

Adopting, as I am bound to do, the views of the superior court as above expressed, I beg to recommend that both prisoners be sentenced to 14 years' imprisonment with labor and irons. I can discover no appreciable difference between their degrees of guilt. The one prepared the medicine for the express purpose with which the other administered it, and the death of the pregnant woman lies equally at the door of both.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The guilt of the prisoner Kora Gazee is fully proved by the evidence of the witnesses, Modoo Bibee No. 7, and Bibee Jan No. 8. That of the prisoner Shoramony Julliah is proved by his voluntary confessions, duly attested by the subscribing witnesses, before the police and magistrate. We therefore convict the prisoner Kora Gazee of culpable homicide by administering drugs to procure abortion, and the prisoner Shoramony of being an accessory to the same before the fact; and sentence them as proposed by the sessions judge, with reference to the reason given by him, to 14 years' imprisonment with labor and irons.

1857.

March 14.

Case of  
KORA GAZEE  
*alias* KARO-  
MUDDI and  
another.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND HAMEEDOODDEEN

*versus*East Burd-  
wan.SADOOCHURN BAGDEE CHOKEEDAR, (No. 1,) ISH-  
UR BAGDEE CHOWKEEDAR, (No. 2,) BHOBANEE  
BAGDEE CHOWKEEDAR, (No. 3.)

1857.

March 16,  
Case of  
SADOOCHURN  
BAGDEE and  
others.

Prisoners ac-  
quitted on sepa-  
rate judg-  
ments in this  
court, the evi-  
dence being  
deemed insuf-  
ficient; and  
the proceed-  
ings of the po-  
lice open to  
much doubt.

CRIME CHARGED.—1st count, Nos. 1 to 3, having commit-  
ted a dacoity in the house of Sheikh Baharooddeen, nephew of  
the prosecutor, Sheikh Hameedooddeen, whereby property in  
cash Company's Rupees 127, in gold and silver ornaments, Com-  
pany's Rupees, 203-4, in brass utensils, Company's Rs., 27 and  
in cloths Co.'s Rs. 42-4 making a total of Co.'s Rs. 399-8 was  
plundered; 2nd count, Nos. 1 and 2, knowingly having posses-  
sion of portions of the property, acquired in the above dacoity;  
3rd count, Nos. 1 to 3, committing the above dacoity whilst  
holding the posts of police chowkeedars.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Abdool Luteef, deputy magistrate of Ja-  
hanabad.Tried before Mr. J. E. S. Lillie, officiating sessions judge of  
East Burdwan, on 5th December, 1856.

*Remarks by the officiating sessions judge.*—The house of the  
prosecutor's nephew was attacked by a band of about twenty-five  
dacoits, and property valued at Rs. 399-8 annas was taken.

The prosecutor was tied down, and he states that he distinct-  
ly recognised prisoners, Nos. 1, 2 and 3, chowkeedars of a  
village, distant only about half a mile. Several of the vil-  
lagers\* depose that they saw the dacoits as they were leaving

\* Witnesses, Nos. 1 to 4.

the house, and that they recog-  
nised prisoners, Nos. 1 to 3.

Prosecutor and the villagers followed the dacoits towards  
their own village, and aver that the latter escaped into a sugar-  
cane field; and that they (deponents) entered the village,  
awoke the gomashtha and informed him of the occurrence, and  
that they had recognised the three chowkeedars.

During the second day after the dacoity two *thallees* were  
found in a tank near the house of prisoner, No. 2, which prose-  
cutor and two of his servants\* have sworn to be part of the  
plundered property.

\* Witnesses, Nos. 18 and 19.

Prisoners, Nos. 1 to 3, in their  
defence deny their guilt, but assign no reason for being accused.

Several witnesses have deposed that prisoners, Nos. 1 to 3  
were on their beat on the night of the dacoity; but their evi-

dence is unsatisfactory, and establishes nothing in favor of the prisoners. The guilt of prisoners, Nos. 1, 2 and 3 appears quite clear. The asserted recognition is corroborated by the fact of the prosecutor and witnesses having gone to the village of those prisoners immediately after the occurrence. The evidence of the gomashita of prisoners' village would have materially strengthened the case for the prosecution ; and the deputy magistrate ought undoubtedly to have enforced his attendance.

The prisoners, however, admit and some of their witnesses have stated, that prosecutor's villagers did come to the village of the prisoners on the night of the dacoity. I attach no weight to the alleged finding of the property. Considering that the crime of dacoity has been established against prisoners, No. 1, 2 and 3, I sentence them to be imprisoned for fourteen years with labor in irons in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley).

*Mr. G. Loch.*—Four prisoners were committed for trial in this case. The sessions judge released one, Oochub, prisoner, No. 4, on the ground that there was no other proof against him, but the recognition of four witnesses ; and that such recognition, uncorroborated by other circumstances, is insufficient for conviction. He has convicted the appellants, prisoners Nos. 1, 2 and 3, on the same evidence, because the recognition was corroborated by the fact that the prosecutor and witnesses followed in pursuit of the appellants, to their village, immediately after the occurrence of the dacoity ; but as the pursuit was made, not because the appellants were recognised, but because the gang were seen to take the direction of Mouza Hijla, the fact of the pursuit cannot be considered corroborative of the evidence to recognition. Further, there is a discrepancy in the prosecutor's statement, compared with the evidence of his witnesses, which cannot be satisfactorily reconciled. The prosecutor charges the prisoners, Nos. 1, 2 and 3, as the parties who entered the house, seized, bound and blind-folded him, while the witnesses depose to these three men, and these only, being on guard outside. It may be said that the prisoners, after having bound the prosecutor, went out to keep guard, but this is contrary to the habits of dacoits, who place their guards before entering the house. The prosecutor's statement as to recognition must therefore be rejected as inconsistent with the other evidence, and there remains nothing but the unsupported statement of the witnesses, which the sessions judge has rejected, in the case of Oochub, as insufficient for conviction ; and the manner in which that evidence has been given, and the specification of the weapons with which each dacoit was armed, renders their testimony, in my opinion, open to suspicion as being tutored, and therefore unworthy of credit. I think, therefore, the prisoners should be released.

1857.

March 16.

Case of  
SADDOOCHURN  
BAGDEE and  
others.

1857.

March 16.

Case of  
SADOOCHUEN  
BAGDRE and  
others.

*Mr. H. V. Bayley.*—The prosecutor deposes that the prisoners, Nos. 1, 2 and 3, were recognised by him as the dacoits, who blind-folded him, and bound him *inside* the house; that they live half a mile off at Hijla; that he and others followed the dacoits towards Hijla, but lost sight of them in a sugar-cane field near that village, and then went to the gomashita of it, who on calling for the prisoners, chowkeedars of the village, got no answer from them, as present. The witnesses for the prosecution declare that prisoners, Nos. 1, 2 and 3, were recognised by them as the dacoits, who kept guard *outside* the house; that they (the witnesses), live close to prosecutor's, and came up on hearing the noise of the dacoity; that on their coming up, the prisoners, Nos. 1, 2 and 3, called to the dacoits *inside*, who came out to the prisoners, Nos. 1, 2 and 3 *outside*; that they (the witnesses) stood behind a broken wall, and recognised prisoners, Nos. 1, 2 and 3, by the light of the torches thrown down by those dacoits, who thus came out. Some witnesses say that they recognised other dacoits, viz. Manik, Sunkur and Oochub (released) by the same opportunity. But all say that prisoners, Nos. 1, 2 and 3, were *outside*, whereas prosecutor swears they were *inside*. It might be urged that prisoners, Nos. 1, 2 and 3, may have first bound prosecutor, and subsequently gone as sentries *outside*; but the witnesses, near neighbours, depose to coming up on hearing the voices of the dacoits, twenty-five or thirty men, attacking the house of the prosecutor; and as this would have been on the first entry, it is difficult to reconcile the discrepancy above referred to.

Two *thalees*, which prosecutor identifies as those in use in his house, were found with prisoner, No. 1 and a *batee*, also identified by prosecutor, with prisoner No. 2. The prisoners claim these to be their own; and their witnesses state that the prisoners had similar utensils, though they cannot distinctly depose to the exact identity of the articles as prisoners'. The sessions judge gives no weight to the finding of these articles with prisoners, as supporting the case for the prosecution.

The prisoners plead *alibis*, i. e. that they were all on their rounds, as chowkeedars at their village, that night. This plea is so far supported that several witnesses speak of their seeing and hearing prisoners at various times of the night; but it is admitted by those witnesses that they *guessed* at the hours they deposed to as being those when they saw or heard prisoners. Further the distance from prosecutor's to Hijla, is only half a mile; and a fact stated by prosecutor, i. e. that he and others went to Hijla, to look for the prisoners immediately after the dacoity, is admitted by prisoners. But that they were called and not found, is *not* admitted by them; while the gomashita, who was the best evidence on this point, as he is stated to have been the person who called them, did not depose before the

deputy magistrate or sessions judge. It may be said that if prisoners Nos. 1, 2, and 3 of Hijla had not been recognised, prosecutor and his witnesses would not have searched in that direction, but the recognition of Nos. 1, 2 and 3 is not given by the prosecutor and his witnesses as the reason for their proceeding to Hijla, but because *the dacoits generally* made off towards that village.

1857.

March 16.

Case of  
SADDOCHURN  
BAGDEE and  
others.

I observe that the occurrence took place on the 25th of July; that the prosecutor gave his information of the dacoity, and of recognising prisoners Nos. 1, 2 and 3, at the thannah on the 26th; that the houses of the prisoners were searched on the 27th, and the property, identified as prosecutor's, found, (it is recorded in one deposition only, that this search was in the presence of the prisoners) and yet the prisoners were not apprehended till the 30th, although the prosecutor's house was but half a mile from prisoners' village, and three *cosse*, or two hours' distance at most, from the thannah. The record furnishes no reason for this delay, and it is not noticed by the deputy magistrate or sessions judge.

All this delay must, however, be considered by me in connection with the other circumstances of the case, as materially affecting the credibility to be attached to the proceedings at the police; and viewed together with the discrepant evidence as to the recognition of prisoners Nos. 1, 2 and 3, and the unsatisfactory and defective evidence as to the identity of the property, and as to prisoners being absent from their village, such weakness appears in the case for the prosecution, that I do not think a conviction just, and would order the release of the prisoners.

The conduct of the police should be brought to the notice of the Commissioner of the division, and I cannot but remark that it would conduce most essentially to the ends of public justice, if the proceedings and records at the police in heinous cases were superintended in person by a deputy magistrate, or an officer of that class, and certified to have been so.



PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

24-Pergunnahs.

MOOKTAH SEEDEE.

1857.

March 16.

Case of  
MOOKTAH  
SEEDDE.

Prisoner sentenced capital-ly the N. A. not concurring with the view of the S. J. as to the measure of punishment.

CRIME CHARGED.—1st count, wilful murder of Koosum Bewah; 2nd count, severe wounding of Sukheena Bibee with intent to kill.

Committing Officer.—Mr. H. Robinson, exercising powers of joint-magistrate of 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 22nd December, 1856.

*Remarks by the additional sessions judge.* The prisoner is a Seedde from the north-east coast of Africa, employed as a Serang stoker in the P. and O. Company's service between Calcutta and Suez. He has a sufficient knowledge of the Hindustani language for all the purposes of this trial, and the Bengali depositions have been all carefully translated to him. As he has no knowledge of Bengali, his confession in the lower court (which he has repeated before me) should not have been recorded in that language.

The prisoner had already one wife, when some nine months ago he married a second wife, the deceased, Koosum, agreeing to pay for her (if he did not actually pay) a sum of money to the witnesses Kuddum Bishtee, and his wife, Sukheena, calling themselves her parents. It is possible this was a mock-marriage, the proper ceremonials not having been complied with; but it is admitted the prisoner might reasonably have thought they had been, and that the marriage had been legally solemnised.

While the prisoner was at work one night at the P. and O. Company's dockyard in Kidderpore, the deceased left his house, her friends said from his having ill-treated her, but *he* says, and I fully believe him, carrying off a great quantity of his property, and designing with the aid of her accomplices, the witnesses, Kuddum and his wife, to break off the alliance, and to re-attach herself, for a new premium to some new victim, to be treated ultimately in the same manner. I am credibly informed that such is a common practice of a low set of designing Mussulmans living at Kidderpore, towards the ignorant unsuspecting and most truthful African savages who visit this part in our Overland steam vessels. The prisoner on returning home from duty missed his wife and commenced a search for her, on which she to be beforehand with him, went to the magistrate's court and complained that the prisoner *had assaulted her.*

The prisoner himself then also went to the magistrate's court to lodge complaint against his wife and her so-called mother-in-law, the witness Sukheena, (who now says she was her cousin, and who is probably no relation to her at all;) against the first for deserting him and against the second for inducing her to do so. The prisoner in all confidence apparently produced the witnesses to the marriage and even the Cazeer himself, but the native officer who tried the case was of opinion no legal marriage had been established, and that the prisoner had no redress before him. The prisoner, when this decision was made known to him, returned to his home in a state almost of despair, and being, he says, egged on by the witness, Arjoo Bibee, not to let the matter pass off without doing something, rushed out of his house, proceeded to that of Sukheena and her husband; found Sukheena, her husband, the deceased, and another person eating their dinner; and with a knife desperately wounded first the deceased in three places (two of which wounds were fatal and caused her death in less than forty-eight hours) and next the woman Sukheena not so severely. He then rushed out of the house; again returned home; and fastened his door. This was about 9 o'clock on the night of the 15th instant; and just before the prisoner reached the deceased's house, the witness Arjoo Bibee, had arrived there to warn the inmates that the prisoner was abroad excited, and meant mischief. There is no reason to suppose the prisoner did not proceed straight to the house of his victims, and the two witnesses Nos. 17 and 18, by no means support Arjoo's story that she had heard from them of prisoner's acts; and I am therefore inclined to believe this Arjoo had, as the prisoner affirmed, for some purpose of her own worked him up to do something terrible, and had then proceeded to Sukheena's house to warn them that he was on a dangerous mood abroad, and to be kept at a distance. The prisoner has throughout confessed to the truth of the above history of the facts of the case, and by his consistency and demeanour I am convinced he has told the truth, and the whole truth, except in one particular: when the witness, Kuddum, went out to call in the police after the occurrence, he met on the road constable Smith, witness No. 7. The constable proceeded at once to arrest the prisoner at his home. The door was both fastened and held by the prisoner, (who it was said by the wife inside, and a mother-in-law in the verandah, was not within) but the constable and his party forced their way in, and found inside the prisoner lying prostrate on the ground close to the entrance, with a wound on the stomach, and a bloody knife between his feet. It is evident this wound was a self-inflicted one, although the prisoner says it was inflicted by Kuddum Bhiste, while he (prisoner) was stabbing the woman at Kuddum's house.

It is not proved and prisoner does not admit that he went

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forth to wound, and then wounded the deceased and her companion with intent to murder them, but rather that he was reckless what would be the result of his violence and did not regard it. In the eye of the law, the going forth to wound, the wounding with such desperate violence and with so deadly a weapon as a long Seaman's knife, and the death shortly after (on 17th December,) from such wounding of one of the persons wounded will amount to wilful murder, the intent to kill being implied; and thus in concurrence with the two assessors, with whom I have tried this case, I am compelled to pronounce the prisoner guilty both of the wilful murder of Koosum Bewah, and of the severe wounding of Sukheena Bibee with intent to kill her. The English constable had the three wounded persons moved at once to the European dispensary, and the evidence of the medical witnesses Nos. 10 and 11, is clear and explicit. Considering all the circumstances of the case, the provocation and ill-treatment, the prisoner, I have no doubt, received at the hands of a gang of low cheating Bengalis, and the prisoner being a foreigner and more than half a savage, I am of opinion that public justice will be satisfied by his being imprisoned for life, with hard labor in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The deceased, on her oath, the day she died, and three other witnesses, have consistently and fully deposed that the prisoner attacked deceased with a knife, and wounded her. Prisoner at first confessed before the joint-magistrate that he inflicted the wounds with intent to kill. He then subsequently said that he did not intend to kill. Before the sessions judge he stated, firstly, that he intended only to wound, and subsequently that he was reckless as to what might be the consequences of his attack.

The sessions judge proposes a sentence of imprisonment for life, on the ground of the provocation prisoner received in being cheated of his wife, after a mock-marriage, which, however, prisoner considered real; and of the prisoner being an ignorant African savage. We cannot concur in this view, but consider that a capital punishment is called for.

The prisoner's confession before the joint-magistrate materially differs from that before the sessions judge, the latter being much more in his own favor; but there is little on the record to corroborate the statement in it. The prisoner says that he never beat the deceased; the deceased, however, on the day she died, deposed that she left him on account of his beating her. The prisoner declared that he was duly married to deceased by *nikah*, and that the Cazee performed the ceremony, but was bought over to state the contrary. The deceased, however, said that she was not the prisoner's *nikah* wife, and was only his kept mistress; and it is admitted by the prisoner, that the

Cazee deposed that he had not performed the *nikah* ceremony for him, prisoner. The prisoner's statement, as to Kurrum, witness No. 3, having wounded him, is no where borne out. The plea that Urjoo Bibee, witness No. 4, "egged him" on, is not in any way substantiated; while, on the other hand, her statement, that she warned witness No. 1, Sukeena, and the deceased, against prisoner's vengeance, in consequence of what she heard from Poran Seedee with whom prisoner messes, and from Maduram Bibee, prisoner's mother-in-law, is supported by the depositions of both, and by that of the latter especially.

As to the wounds, the civil surgeon deposes before the sessions judge, that "either of them was certain death, for one penetrated the gut and the other the lungs, and two bones were broken," and the evidence of the eye-witnesses is, that the wounds were inflicted with great force. The intent to kill is to be strongly presumed from these facts.

There is little doubt, but that the loss that day of the case, which prisoner brought for the recovery of deceased from Sukeena's house, irritated him, and it is possible that she was his *nikah* wife, and probable even that prisoner thought so. Still we cannot see that, even if these were proven facts, they could be urged in mitigation of capital punishment in a case like this, where it is clear there was no sudden, but a deliberate and malignant intent to kill, from the manner and time of the attack, the character of the instrument, and the nature of the wounds.

In regard to the prisoner being an ignorant African savage, it is apparent from his own statement, that the prisoner has resided here some time, and has made frequent and regular voyages in the service of the Peninsular and Oriental Steam Navigation Company. This fact militates against the idea that he is of that description of ignorant savage unacquainted with the usages of civilised life, to the case of whom only this specific plea would apply.

We sentence the prisoner capitally.

1857.

March 9.

Case of  
MOOKTAH  
SEEDER.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND SHEIKH SOBHANEE

*versus*

SHEIKH SAGUR (No. 2,) SHEIKH BUHUR (No. 3,) SHEIKH SURROOP (No. 4,) MUSST. DHUNNEE (No. 5,) AND MUSST. KHEERUN (No. 6.)

Dacca.

1857.

March 17.

Case of  
SHEIKH  
SAGUR and  
others.Prisoners ac-  
quitted; the  
evidence be-  
ing unsatisfac-  
tory, and op-  
posed to the  
probabilities  
of the case.

CRIME CHARGED.—Nos. 2 to 4, wilful murder of Khodaru-hum son of Sobhanee the prosecutor; Nos. 5 and 6, 1st count, accomplices in the above crime; 2nd count, accessaries after the fact to the above murder; 3rd count, privy to the above murder.

Committing Officer.—Baboo Joychunder Gooho, deputy magistrate of Manickgunge.

Tried before Mr. E. S. Pearson, officiating sessions judge of Dacca, on the 23rd December, 1856.

*Remarks by the officiating sessions judge.*—Prosecutor, Sobhanee, father of deceased, Khodaru-hum states, that on the night of Monday the 1st September, corresponds with 18th Bhadur, he and his wife Jusho were awakened by a cry. They got up and called out, and were answered by Meena, prosecutor's grandson who cried out, "Uncle is dead he does not answer." Towards dawn prosecutor went out to the house of Dookhi Fukeer, another of his sons, and then saw the body of the deceased, which had been brought there by Meena and Cheeka who had been sleeping with deceased in a boat at the *ghat* close by. They then called Hazaree and Booddi chowkeedars and examined the body: there was earth sticking to it, on the chest, nose, and thighs, and blood flowing from the nose. While they were examining it, the prisoner No. 5, Musst. Dhunnee came up and said, "Why are you looking at it? bring it," then they took the body to the thannah, but owing to a storm did not reach it till the following day September 3rd. Prosecutor states that deceased had had for some time intrigue with the wife of the prisoner No. 2, Sheikh Sagur, viz. prisoner No. 6, Musst. Kheerun. That on one occasion about two years before, deceased had been caught by some of the villagers, Fukeer, Muddoo, Bagga and Booddi chowkeedar with Kheerun, and that she also went away with him once. Supposes that from enmity on this account Sagur murdered deceased, and charges him alone with the murder.

The prisoners pleaded *not guilty*.

Witness No. 1, Musst. Ryemonee, prisoner No. 2, Sheikh Sagur's *nikka* wife gave direct evidence to the murder to the following effect: that she, her husband Sagur, and his other wife Khee-

run, were all sleeping in one house on that Monday night : that she was wakened by a noise as of struggling, and found Kheerun struggling with some one, Sagur then went outside and called, " Who is it," and Kheerun answered, " It is Khodaruhum," then Sagur seized deceased and began to beat him, then Kheerun went and called her brother Sheikh Buhur and Sheikh Surroop her brother-in-law, (prisoners Nos. 3 and 4,) and they coming up likewise began beating deceased. Then Kheerun called her aunt Must. Dhunnee (prisoner No. 5.) who came up and began to abuse deceased. Then Sagur taking a "*gumcha*" which deceased had, stopped his mouth with it, and Buhur twisted it round his neck, and Surroop with a rope bound his hands behind him, and then all three of the male prisoners beat deceased till he was dead. Then all five prisoners took up the body and went out westwards. Little time after Sagur and Kheerun returned and threatened witness if she were to say any thing. There are three discrepancies between this witness's evidence here, and that before the magistrate. First before the magistrate she said that Surroop twisted the *gumcha* round deceased's neck, and Buhur bound his hands, here she transposed those two names: on being asked, Which statement is correct? she answered the latter; secondly, before the magistrate she said that in answer to Sagur's interrogation of, " Who is there?" deceased himself answered, " It is I," whereas here she said that Kheerun answered, " It is Khodaruhum." This she explains by saying that at first both Kheerun and deceased answered; thirdly, before the magistrate she said that deceased recommenced his visit to Kheerun *four months* after her husband had brought Kheerun back, and here she said the visits were commenced *for a year* after that. As to this, she says she cannot remember clearly how long an interval it was. Also before the magistrate she said that Kheerun called the other two male prisoners *at her husband's order*, here she said nothing about such *order*.

The body of deceased was examined at the thannah on the morning of the 3rd September, in the presence of witnesses Nos. 2\* to 4, of whom I observe that only the first can write. They verified

- \* No. 2, Abbas Allee.
- " 3, Muthoorakanth Shah.
- " 4, Juggernath Shah.

the *sooruthal* and stated that the body presented the following appearance, blood had flowed from the nose, the face, eyes, cheeks, arms, chest, throat swelled and black, four fingers (i. e. thumb and three) of the right hand broken. The body arrived at the station in too decomposed a state to allow the civil surgeon to make any statement as to the cause of death.

Witnesses† Nos. 5 and 6, stated that deceased was sleeping with them in prosecutor's hired boat at the Ghaut close to the village on the night of the mur-

- † No. 5, Sheikh Moena.
- " 6, Sheikh Cheeka.

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Case of  
SHEIKH  
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others.

der. Deceased lying outside and they inside the *chopper* of the boat, that during the night they were suddenly awakened by deceased's falling upon them, and that on starting up they found he was dead. They called out and deceased's mother Jusho and Bolim Begum came out, and they (witnesses) saw two men running away, witness No. 5, says northward, witness No. 6, westward, and No. 6, adds that from their having short hair he thought they may have been Sagur and Surroop. Then they took up the body and carried it to Dookhai Fukeer's house, and when it was light, examined it, and found marks of earth upon it, and on the neck marks of a rope and a black mark on the nose. The prisoner Musst. Dhunnee came too, and said, "What is the use of crying? bring it," Sagur and Kheerun also came, and Sagur said a snake had bitten deceased. This latter witness in his foudjary evidence mentioned the intrigue between deceased

No. 7, Sheikh Durbaree.

„ 8, Tukee Khulecfa.

and Kheerun, here he omitted it. Witnesses\* Nos. 7 and 8, heard a noise in the night, but

did not get up. The former says he heard the noise first in Sagur's house, viz. the voices of Sagur and his wives and afterwards the mother Jusho and brother Wallee of deceased crying out. Both of these witnesses mentioned the existence of the

† No. 9, Sheikh Olec.

intrigue between deceased and Kheerun. Witness† No. 9, was

wakened by Meena crying out, went down to the boat and helped to bring in the body of deceased to Dookhai's house, fancies from the appearance of the body that deceased must have been compressed to death.

Witness‡ No. 10, attended the examination of the body and

‡ No. 10, Sheikh Allum.

mentioned the intrigue and consequent enmity between deceased

and Sagur. In the foudjary evidence he added that deceased told him one day that Sagur wished to revenge himself on him. When asked him why he omitted this, he said that it being a matter of some months past he did not think of it.

Prisoners Nos. 2, 3, 5 and 6, made the same defence, viz. that the witness Musst. Ryemonee (No. 1,) is jealous of her co-wife, Kheerun, on account of Sagur having made over to the latter all the property. Prisoner No. 4, said that he is not on good terms with Sagur and his wife and never goes near them, and that on the night of the murder he was sleeping at the Kala Nuttee.

Prisoners Nos. 2, 3 and 5, also added that their witnesses would prove that Cheeka and Meena (witnesses Nos. 5 and 6,) told them that deceased got up in the boat that night, gnashing with his teeth and making convulsive movements with his hands, and groaning, died.

Prisoner No. 3, added that the darogah had beaten him in

Bubnapara Bunder, but of this there is no mention in his foudary answer.

Prisoner, Sheikh Sagur and Musst. Dhunnee's (Nos. 2 and 5.)

\* No. 11, Hazaree Chowkeedar.

„ 12, Boodhaee Ditto.

witnesses\* stated that witnesses

Nos. 5 and 6, told them that deceased

was gnashing his teeth

and grasping them (Cheeka and Meena) in a convulsed manner in the boat: that they called Dookhai Fukeer and took him on shore, and as they were taking him on shore, he died.

Witness† No. 8, re-examined on the part of prisoners Nos. 2,

† No. 8, Sheikh Tukee Khuleefa.

3 and 6, said that Ryemonee and

Kheerun are always quarrelling.

Denied that witnesses Nos. 5 and 6, said anything about deceased having died in convulsions in the boat, and stated that the aforesaid witnesses Nos. 5 and 6, merely said that they were wakened by the dead being flung into the boat upon them.

No. 13 witness‡ on the part of prisoner No. 3 likewise denied

‡ No. 13, Manoo Ferazee.

that witnesses Nos. 5 and 6 had

told the above story of deceased

dying in convulsions.

Witnesses§ Nos. 14, 15 and 16 on the part of the prisoner

§ No. 14, Sachoonnee.

„ 15, Cala Nuttee.

„ 16, Chinta Nuttee.

No. 4 stated that he was sleeping with Chinta Nuttee that night.

Witness|| No. 17 said that he

heard prisoner No. 5 cry out in the

night (of the murder) "What is

Wallee crying out for?"

|| No. 17, Pachoo Sheikh.

Witness¶ No. 18 knows nothing in favor of prisoner No. 6.

¶ No. 18, Bejooah.

Witness\* No. 19 stated that the

two wives, witness No. 1 and prisoner

No. 6, are always quarrelling.

\* No. 19, Madhooa Sheikh.

The Cazee gave a *futwa* of acquittal of all the prisoners, as the evidence of one eye-witness and that, a woman, unsupported by violent presumption, is insufficient for a conviction of the crime of murder according to the Mahomedan law. For the following reasons, I dissent from this finding. It has been ruled long since that the evidence of a single witness, if believed, is sufficient for conviction, it is to be considered therefore what degree of credit is to be given to the direct evidence of witness No. 1, Musst. Ryemonee, and the first thing to be ascertained is whether she is likely to have given false evidence from interested motives. Upon this point, I observe that though the witnesses for the defence have proved that ill-will existed between her and her co-wife prisoner No. 6, it is no where alleged or proved that she was on bad terms with either her husband or prisoners Nos. 3 and 4, and I cannot believe that to gratify her feelings against Kheerun she would wan-

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touly and gratuitously swear away their lives. It is doubtless unusual for a Bengali woman to give evidence so coolly and connectedly as this witness has done against such near relatives, but I am of opinion that Ryemonee's hatred of Kheerun accounts sufficiently for her having thus spoken out, though I do not think this hatred would have led her to fabricate a story involving the ruin not only of her rival, but also of her husband and his brother-in-law. If then Ryemonee did not invent the story of the murder herself, by whom was it invented? and who instigated her to give this false evidence? Not one of the prisoners has answered this question. In the foudjary, prisoners Nos. 2 and 4 did doubtless allege ill-will to them on the part of the prosecutor Sobhanee, but on what account, they did not state, and before me they made no mention at all of Sobhanee's ill-will to them. Prisoner No. 6 alleged ill-will to her on the part of the witness Meena No. 5, but her witnesses knew nothing about it. Then as for Ryemonee's story, it is clear and connected, and contains to my mind nothing improbable on the face of it. The discrepancies above noted between her deposition here and at the foudjary are certainly not material ones, and are satisfactorily explained by her. The credibility of Ryemonee's story is supported by the fact of the existence of the liaison between deceased and Kheerun, which is proved by the evidence of several witnesses and is not denied by any of the prisoners, but the woman Kheerun herself, and from this cause strong enmity may reasonably be presumed to have existed between prisoner No. 2 and deceased, for it is proved that he was aware of the intimacy, and of Kheerun having once before gone away from his house, after which he brought her back. The appearance of the body consists well enough with Ryemonee's relation of the manner in which the three male prisoners beat deceased, viz. with their hands; and she has identified both the *gumcha* found round his neck as that which he had when attacked by the prisoners, and also the rope with which the hands were found bound, as belonging to her husband's house. The body presented evident marks of *violence*, and not *such* appearances as would have been remarked if deceased had died in *convulsions*. The attempt to shake the evidence of witnesses Nos. 5 and 6, on the part of the prisoners, by making it appear that they gave a different story at the time to what they did subsequently has broken down, for of the four witnesses who were to have spoken to this point, two alone have said that witnesses Nos. 5 and 6 said deceased died in convulsions, while, the other two have deposed to the contrary, viz. have given the same account as the witnesses Nos. 5 and 6 themselves.

The proceedings of the police were perfectly regular, except that Musst. Ryemonee's evidence was taken down in extenso instead of an abstract merely being given as prescribed; and

also that two of the *sooruthal* witnesses cannot write. With regard to prisoner Sheikh Buhur's (No. 3's) complaint in his defence before me that the darogah had beaten him, there is no mention of this in his answer before the magistrate, nor did he call any witnesses to speak to this point, I do not therefore attach any credit to his assertion.

Upon the whole I consider that the evidence of Musst. Ryemonee, supported as it is by circumstantial and presumptive evidence, is entitled to full credit: it is therefore my opinion that the crime of wilful murder is proved against prisoners Sheikh Sagur, Sheikh Buhur and Sheikh Surroop (Nos. 2, 3 and 4.) Strong provocation might reduce the crime to culpable homicide against prisoner No. 2, were it not that he deliberately sent his wife to fetch the other two male prisoners (for we must presume that Musst. Kheerun acted under his orders, as indeed Ryemonee stated that she did in the foudjary) to assist him, so that he cannot be said to have killed deceased in the heat of passion. Still I would allow the provocation to act in mitigation of the punishment of all three (for prisoner No. 3 is Kheerun's brother, and No. 4 her brother-in-law, their angry feelings would likewise be naturally excited by the circumstances under which deceased was caught) and accordingly I would recommend that prisoners Sheikh Sagur, Sheikh Buhur, and Sheikh Surroop (Nos. 2, 3 and 4) be imprisoned for life in transportation.

I do not consider the 1st and 2nd counts proved against prisoners Musst. Dhunnee and Musst. Kheerun (Nos. 5 and 6) for though they were present at the time of the murder, it is not proved that they were aiding and abetting, for as before said, Musst. Kheerun must be presumed to have obeyed her husband's orders in going and calling the other prisoners, but I would convict them of privity only, and sentence them each to three years' imprisonment.

Ryemonee qualified her statement in her examination in chief of all five prisoners having *taken up the body*, by afterwards saying in an answer to my question, that all five prisoners *went out with the body*.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The direct evidence in this case is that of Ryemonee, witness No. 1. It has been detailed in the sessions judge's remarks. The sessions judge credits it, because he thinks that she would not jeopardize prisoner No. 2, her husband, however much she might wish to injure her co-wife, prisoner No. 6, Musst. Kheerun. It is in evidence, and stated by this witness, No. 1, that deceased intrigued with prisoner No. 6; that she once eloped with him; that prisoner No. 2, then intermediately married by *nikah* this witness Ryemonee; that he afterwards brought back his other wife, prisoner

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No. 6, Musst. Kheerun; and that he devised to the latter all his property; that in fact the prisoner, No. 6, was the favoured wife of her husband, notwithstanding her elopement.

It is not therefore altogether impossible that witness, No. 1, Ryemonee, the only direct witness, had feelings of enmity against her husband, prisoner, No. 2. In addition to this cause of doubt as to the trustworthiness of her evidence, we do not think that it is sufficiently corroborated by the circumstances on the record, or by the probabilities fairly arising from those circumstances. The witnesses, Nos. 5 and 6, Meena and Cheeka, relatives of deceased, state that they and deceased slept generally in their boat; and that on the night of deceased's death his corpse was flung into it near their heads, while they were asleep; and that this awoke them; that it was a darkish night; but that at a *pakee*, (or beegah) off they saw two persons whom they thought they recognized as Sagur, prisoner, No. 2, and Buhur, prisoner, No. 3, going through the water westward; and that the bushy hair of the one and the cropped hair of the other led them to this supposition. Such recognition must, under most circumstances, be unsatisfactory; nor was this fact mentioned by the witness, Meena, to the sessions judge, until the question was put to him, why he had so deposed before the magistrate, and not to the sessions judge. Further it appears from these witnesses that though the corpse fell upon them that night when they were asleep, and that they then saw two persons whom they supposed to be Sagur, prisoner, No. 2, and Buhur, prisoner, No. 3, go away directly after, and though they knew of the intrigue of deceased with prisoner, No. 6, the wife of prisoner, No. 2, yet prisoner, No. 6, and prisoner, No. 2, are said by these witnesses to have come that night to the house of Dookhai, a relative of the witnesses, where they (witnesses) had taken the corpse, and no questions were asked, and no suspicion evinced against those very prisoners, then and there present; indeed it would appear that Sagur was asked to inspect the body, and see if he could do any thing to restore any animation, and did so before these witnesses, and others. Moreover notwithstanding the suspicious manner in which the corpse of their own relative fell upon these witnesses, after he had left them all well to go to sleep on the top of the boat, and the supposition of these witnesses at the time at which the corpse thus suspiciously fell upon them that the persons whom they saw making off were Sagur and Buhur, and notwithstanding that, they knew that deceased had intrigued with prisoner, No. 6, the wife of Sagur, and that consequently Sagur would have a very strong motive of enmity against deceased, and that they took the body, and that Sagur, before them, looked at and examined it, yet neither of the witnesses nor any other person is shewn to have discovered or looked for marks of violence till the next day, when marks

are said to have been found, (but on no medical testimony,) corresponding in each detail with what the maltreatment stated by witness, Ryemonee, to have been the cause of death, would have produced. It is also improbable that if the prisoner, No. 2, seized deceased, because he had then caught him with his wife, prisoner No. 6, he should have sent *her*, and not his other wife, witness Ryemonee, to fetch prisoners, Nos. 3 and 4; when the alleged purpose of their being called was to severely injure, if not to kill deceased, on account of his being the paramour of that very person selected to fetch them. It is also very improbable that all present except this witness, No. 1, should have taken away the corpse, or that prisoners, Nos. 2 and 3, as if with the view of attracting attention, should throw the corpse into the boat; when, as is shown by the record, they might have submerged it elsewhere, or left it silently in the water close to the boat on which he had slept, so as to make it appear that the deceased had been accidentally drowned, or at least to make it more difficult to ascertain the cause of death, and decrease the chances of detection. The evidence for the defence too, especially as regards prisoner, No. 4, is not altogether unsatisfactory. We therefore differ from the sessions judge, and considering the amount of proof insufficient for conviction, direct the release of all the prisoners.

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GOVERNMENT AND MUSST. GOMEA KAHARIN

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*versus*

HURCHURN SINGH ALIAS HEEROO SINGH, RAJPOOT.

Case of  
HURCHURN  
SINGH RAJ-  
POOT.

CRIME CHARGED.—Wilful murder of Meghoa Kahar.

Committing Officer.—Captain J. Simpson, principal assistant commissioner of Hazareebagh.

Tried before Captain W. H. Oakes, deputy commissioner of Chota Nagpore, on the 24th November, 1856.

Prisoner con-  
victed of culp-  
able homicide.  
Some of the  
pleas of coun-  
sel contradict-  
ed by the re-  
cord. Inter-  
polations no-  
ticed. Atten-  
tion drawn to  
Circular Order  
16th June  
1843, No. 138.

*Remarks by the deputy commissioner.*—It appears that on the 20th May, 1856, there was a marriage at the house of Jaenath Kurrin, witness No. 1, and that the prisoner who is his cousin's husband, having been invited to the ceremony, had arrived at his house some days previously. Towards day-light of the date abovementioned, the deceased, servant of witness No. 1, and Hirroo Kahar, witness No. 4 were called to take the bridegroom's *dooly* into the compound of Jaenath Kurrin, witness

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No. 1. The *dooly* had just been carried in, when the prisoner, who was in a house within the compound, rushed out with a rather heavy piece of wood in his hand, and struck the deceased a severe blow on the head fracturing his skull and knocking some of his brains out, and then gave him a second blow with the same instrument on the left arm. Deceased fell down, but recovering in a slight degree, was led to his house by witnesses Hirroo Kahar No. 4 and Chummun Hajam, No. 5, and having arrived home, died about 12 o'clock of the same day, from the effects of the injury he had received.

Witness Jaenath Kurrin No. 1, seized the prisoner, but he managed to get out of his hands and mounted his horse and went off towards his residence in the village of Bugroo.

Prisoner pleads *not guilty*.

The eye-witnesses\* to the fact, though differing in some minor particulars, depose that the prisoner made the onslaught, as abovementioned, on the deceased, and witnesses Nos. 1, 2 and 4, also add that he died about

noon the same day.

Chummun Hajam, witness No. 5, states that he and No. 4, after the deceased had been assaulted, led him home and that he expired about 12 o'clock of the same day.

The witnesses as per margin† prove the arrest of the prisoner at Bugroo on the 29th May 1856.

- \* No. 1, Jaenath Kurrin.
- „ 2, Radhay Panday.
- „ 3, Guddoo Panday.
- „ 4, Hirroo Kahar.

The subscribing witnesses‡ to the *soorothal* duly attest its contents and prove that the deceased died from the injury inflicted on his head.

- † No. 6, Kadirdeen Khan.
- „ 7, Sheikh Buxoo.
- „ 8, Sheikh Wahedali, burk-undaz.
- „ 9, Goburdhun Singh.

The remaining witnesses for the prosecution state that the

prisoner since Srawun last had not been quite in his right mind.

For the defence several witnesses§ have been produced, who

- § No. 9, Goburdhun Singh.
- „ 19, Lilkunt Does.
- „ 21, Dookhin Kahar.
- „ 22, Boodhun Gutwar.
- „ 23, Puchna Ditto.
- „ 24, Mohadewa Kahar.
- „ 25, Chundun Panday.
- „ 26, Chunna Lall. [Singh.
- „ 28, Thakoor Munuinath
- „ 29, Benikurn Deo.
- „ 30, Jearam.
- „ 31, Bhikoo Mahto.

depose that the prisoner went to the marriage and that he left quickly after it was over, but that on the road home he behaved in an eccentric manner, sometimes getting off his horse and then getting on, throwing stones at his companions, and finally going off into the jungles; and that the prisoner since Srawun last has not been quite right in his mind.

The jury\* have found the prisoner *not guilty*. In this finding I do not concur. That the deceased was killed by the prisoner, I see no reason to doubt, as the eye-witnesses to the fact have given a clear account of the attack on the deceased. That the prisoner intended to take the murdered man's life, may fairly be inferred, as he struck him with such force as to break his skull and to dash out his brains. The piece of wood made use of by the prisoner, resembles the leg of a common *charpoy*, but is not so thick, and was very likely to cause death, if used with violence to strike a person on the head. The instrument appears to have been fixed slightly in the wall of the house in which the prisoner was, and to have been taken by him from its position for the deadly purpose for which he employed it.

The cause of the murder, as may be gathered from the testimony of witness, No. 1, would appear to be that the prisoner and deceased had, in the early part of the night in question, a slight altercation, because a *dooly*, which the deceased was carrying, had been pushed against prisoner's horse on which he was riding at the time. Be this the cause of the deed or not, I think it is clearly established that the deceased was killed by the prisoner. It will be observed that a petition has been put in by his uncle, stating that the prisoner is insane; but he has not, in his defence, said any thing on the subject of his insanity. Many witnesses have been examined on this point; and they have gone no further than to state, that the prisoner is not in his right mind, and the evidence given of this, is, that he had assaulted one or two persons and was in the habit of wandering about the jungles. The prisoner, however, exhibited no symptoms of insanity while in jail as reported by the medical officer, nor did his conduct, during the trial before the sessions court, show any symptom of insanity and as far as I saw the prisoner, I should say he was quite in his right senses. Being of opinion that the crime of murder is fully brought home to the prisoner, I recommend that a capital sentence may be passed on him.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Deputy commissioner convicts the prisoner of wilful murder, and recommends a capital sentence. The evidence for the prosecution clearly proves that the deceased Meghoa was killed by the prisoner Heeroo Singh. In appeal, the counsel for the prisoner, Mr. Money, has pleaded:

1st.—That the eye-witnesses who before the sessions judge deposed to having seen the murder committed, have, before the darogah and magistrate, stated that they were not present, and

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\* Rowshun Lall Mookhtear.  
Gungapershad Ditto.  
Brojolal Ditto.

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did *not* see the blows inflicted, but merely *heard* of the murder; and that their evidence, unsupported by further proofs, is undeserving of credit.

2nd.—The crime of which the prisoner stands charged is not wilful murder, but manslaughter only.

3rd.—The prisoner is not in his right mind, and therefore irresponsible, or at least only responsible to a limited degree.

The first plea was waived by the counsel for the prisoner, as it was found, on examination of the record, that the depositions of all the eye-witnesses, taken before the darogah or the magistrate, had been altered, and words changing the purport of the evidence from the affirmative to the negative had been interpolated, probably after the conclusion of the trial. Alterations had also been made in one of the depositions taken before the deputy commissioner, by additions to the blank spaces at the end of the questions and answers, where these were put in juxtaposition, on the right and left hand side of the page.

As regards the second plea the court considers the crime committed by the prisoner to be culpable homicide, and not wilful murder. The prisoner had been riding in the marriage procession, when the *palky* carried by the deceased grazed his horse. Irritated by what he considered the fault of the deceased, he tried to strike him with his whip; but Meghoa ran off, and avoided him. When the procession arrived at the door of the witness Joykurrun Singh, (at whose house the marriage was being celebrated) and after no great interval of time, Meghoa and Hirroo Kahar brought the *palky* for the bride into the interior of the house, and were standing near it, when the prisoner, apparently still under the irritation of the insult he imagined himself to have received, ran out from an adjoining house, and struck the deceased Meghoa a blow on the head with a piece of *sal* wood (used as a peg to hang things on) which he had pulled out of the wall. He then gave him a second blow on the left arm; and throwing down the instruments, he went outside of the house, and drawing his sword, threatened the life of any one, who attempted to seize him. The first blow given by the prisoner fractured the deceased's skull, the brain protruding; and he died in consequence of that blow, about midday. Considering the nature of the instrument used, and the attack to have been made by the prisoner while still labouring under the irritation caused by the collision with deceased during the procession, we do not think there was malicious intention of causing death.

As regards the third plea, we do not think the evidence sufficient to justify us in considering the prisoner irresponsible, or responsible to a limited degree only, for his acts. His conduct, according to the evidence of those of his witnesses whose testimony is not shewn to be inconsistent and untrustworthy, had

been eccentric, and his temper very irritable; but there is nothing in the conduct testified by them to shew that he had not sufficient possession of his mental faculties to prevent his being fully able to distinguish that this act was wrong. We therefore sentence the prisoner Hirroo Singh, to be imprisoned in banishment for ten (10) years with labor and irons.

We draw the attention of the Deputy commissioner and Assistant commissioner to the unauthenticated alterations made in the record, evidently with the intention of destroying the credibility of the evidence, and ensuring the acquittal of the prisoner before this court. They have been marked in this court; and are at least nineteen in number. The principal are to the effect, of making the witnesses say they had *not seen*, what without the alteration would be that *they had seen*; and that prisoner 'or *some one*' had struck the blow, when without this alteration the record would be that they had seen *the prisoner* strike the blow. There can be no reasonable doubt both from their tenor, and the first plea in this appeal, that these alterations have been made at the instigation of the prisoner, or of his friends, and with the connivance of the amlah in whose charge the records have been, since the trial was concluded. The local officers will therefore immediately make strict enquiries by whom or by whose connivance, or neglect, the alterations have been made, and bring them to punishment, reporting to this Court the measures adopted. We have come to the conclusion that the alterations have been made since the trial was finished, for the interpolations are obvious in the colour of the ink, the erasures, and spelling; and the purport of the passages where they appear is, as rendered, so ungrammatical, unmeaning, and inconsistent with the rest of the statements, that the deputy commissioner's attention must without doubt, have been attracted to them, and the witnesses have been cross-examined by him regarding such obvious and main discrepancies in their evidence, had they existed, when the case was before him.

The witness, Chummun Hajam, has evidently committed perjury, of which the deputy commissioner has taken no notice. He should now do so.

We draw the attention of the lower courts to the Circular Order of the Nizamut Adawlut of 16th June, 1843, No. 138, Para 3. Part 4, which prohibits police officers taking the depositions of witnesses in the mofussil in detail, and requires that a mere abstract of the purport of the evidence which they are prepared to give, should be recorded. The obvious importance of magisterial officers insisting upon obedience to this C. O. should suffice to secure its objects.

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## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*

Hooghly.

DOKOWREE SHAH FUKER.

1857.

CRIME CHARGED.—Having belonged to a gang of dacoits.

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Committing Officer.—Baboo Chunder Seekur Roy, deputy magistrate, under the dacoity commissioner, Hooghly.

Case of

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 6th January, 1857.

DOKOWREE

SHAH

FUKER.

*Remarks by the additional sessions judge.*—This is a very strange case. The prisoner had never been named by any one

Prisoner as an accomplice in any dacoity, and of course no order was  
 convicted and ever given by the dacoity department to have him arrested,  
 sentenced under but, while an officer of that department was searching in Calcutta,  
 der Act in company with a Calcutta informer of the name of Rumzaun,  
 XXIV of for another person, they alighted on the prisoner, whom the  
 1843, on his informer seemed to know well, and whom the latter by giving  
 own confes- information to the head of the Calcutta police, was quickly  
 sions, duly authorized to apprehend, and did apprehend and convey to the  
 corroborated. dacoity office at Hooghly. The informer swore to the chief  
 magistrate the prisoner had been concerned in the Chowghurria  
 dacoity and it was for that his arrest was authorized.

On reaching Hooghly, the prisoner at once confessed to the dacoity commissioner to having been a *particeps criminis* in five dacoities, the names of which are given in the margin,\* of the first four of these, we know of every thing; and the records of the cases are now before me, but it will be observed Chowghurria is not one of the five,

and that Rumzaun Ali is not a witness in the calendar to explain the omission and the knowledge on which he spoke of prisoner's complicity in *any* dacoity.

Before me the prisoner repeated his confession in the most free and unrestrained manner, again naming the five dacoities as before as those alone in which he had been concerned. The two approver witnesses speak, the first to having been with prisoner in all the five dacoities, and the second to having been in two of them with him, but as amongst the names they gave of their associates in these affairs, in their original confessions, the prisoner's name was never once mentioned by them, I look upon their testimony as utterly worthless.

Such being the circumstances, I felt inclined to acquit and

\* Nadeen.

Puupura.

Boro.

Nogurdanga.

Bulundhar.

discharge the prisoner notwithstanding his reiterated admissions, under the idea that when once signed as a dacoit he may, though not one, have feared conviction on false evidence, and to save himself from transportation have confessed to what he never committed, but first I subjected him to a cross-examination as to the particulars of two of the dacoities\* he declared he had

\* Nadeen and Punpura. joined in and found his answer to be such as to leave no doubt he had been present in them, and one of the gang. Had he varied in any way from the history of the cases recorded in the records of the offences, I would most assuredly have ordered his release.

I now beg to recommend that the prisoner be sentenced to imprisonment for life with hard labor in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has confessed before the deputy magistrate to having committed five dacoities, in company with the gangs of Sona Fukeer and Kangally Mussulman, mentioning the names of several of his associates, some of whom have been apprehended and convicted, and in whose statements are the names of parties also mentioned by the prisoner. There was apparently no opportunity for collusion, for the prisoner was apprehended on 11th November, 1856, in Calcutta, forwarded to the deputy magistrate on the 12th, and his examination in which he confessed to these dacoities, and mentioned the names of the approvers, was taken on the 13th November, 1856, immediately after his arrival; and the deputy magistrate states that “on being confronted with them (the approvers) he pointed each out and called them by name.” The prisoner repeated his confession before the additional sessions judge. We therefore convict him on his voluntary confessions of having belonged to a gang of dacoits, and sentence him as recommended by the sessions judge to transportation for life, under Act XXIV. of 1843.

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Case of  
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FUKEER.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*

Hooghly.      HURISH GHOSE (No. 2,) AND JADOO GHOSE (No. 3.)

1857.

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Case of  
HURISH  
GHOSE  
and another.

CRIME CHARGED.—1st count, dacoity on the night of the 19th July, 1853, in the house of Mooktaram Pal Koomar at Nemazghur, thannah Bansberya, zillah Hooghly; 2nd count, dacoity on the night of the 3rd March, 1856, in the house of Gorachund Dhara Kyburt at Malunpore, thannah Hooghly, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

Prisoners  
convicted, and  
sentenced un-  
der Act  
XXIV of

1843; the tes-  
timony of the  
approver-wit-  
nesses being  
corroborated  
by independ-  
ent evidence.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 5th January, 1857.

*Remarks by the additional sessions judge.*—Both prisoners are charged with the dacoity at Nemazghur on the 19th July, 1853. The approver witness Madhub Chung, confessed to this dacoity on the 31st July, 1856, before either of the prisoners were arrested, and in his confession declared both the prisoners were concerned in the affair with him. He has now repeated this statement on oath, and has given the particulars of the dacoity as at first. His evidence is corroborated by both direct and circumstantial evidence of the most complete and satisfactory character.

The crime was reported *immediately*, viz. during the night of the 19th July, 1853. Witness No. 3, is the owner of the house attacked, and he gave his formal deposition to the darogah on the 20th July. In this deposition he stated he had recognised in the act, there being moonlight at the time and torches kept burning, *the approver witness and both the prisoners*. Witnesses Nos. 4 and 5, gave their depositions to the darogah also on the 20th July, 1853. The first is witness No. 3's brother, who was living with him at the time, and the second, the gomashita of the village. They too then declared they had also distinctly recognised the prisoners and the approver witness amongst the robbers. Before me each of the last three witnesses has again to-day deposed on oath to the same effect, as he did three and a half years ago. Such evidence as corroborating the direct testimony of an accomplice appears to me irresistible, especially when it is added that witness No. 6, who was then the chowkeedar of the village where the dacoity was committed, also saw and recognised the prisoners during the robbery, and communicated the fact to the

darogah within a few hours of the occurrence, viz., before daylight on the 20th July. Lastly, on the 20th, the burkundaz at the Satgaon Phanree joined the darogah at the scene of the offence, and deposed to the effect that he had visited the village on the night in question on his rounds, and had been told *then* of the recognition by the owner of the house and others of the prisoners, the approver, and some others of their accomplices. This *phanreedar* took steps to arrest those dacoits who had been recognised the very night of the dacoity. He visited their houses (for they lived in neighbouring villages) *and found them*

Wits. Nos. 9, 10, 11 and 12. *all absent*, and he stationed the chowkeedars he carried with him to arrest them each on his return home, and they were so arrested on the morning of the 20th July. The only proofs against the prisoners and others at the time being "recognitions," the magistrate did not commit them to the sessions.

With the dacoity charged in the second count at Malunpore on 3rd March, 1856, both the prisoners are likewise charged on the evidence of two approver witnesses Nos. 1 and 2, No. 1 witness in his confession of 2nd August, 1856 denounced these prisoners as accomplices as also his fellow-approver witness; but the last named in *his* confession to this dacoity recorded on 7th August, 1856, denounced prisoner, No. 2, and approver witness, No. 1, but not the prisoner, Jadoo Ghose, No. 3. Both describe before me the particulars of the case as in their original confessions, but the approver, Issur, *now* says the prisoner, Jadoo, was in the affair as well as the other two. In support of this direct evidence, we have first a denunciation of the prisoner, Hurish, and the two approvers by an accomplice, Doorga Churn Ghose, now a convict in transportation, in his confession to this dacoity taken down on the 6th August, 1856. Secondly, the deposition on oath of the approver, Madhub, in the case noted in the margin,\* bearing date the 28th September, 1856,

\* Government *versus* Govind Dey Teelo and others. in which, with respect to this dacoity, he declared incidentally both the prisoners now under trial and the approver, Issur, were concerned with him in it.

Both the approvers have committed other dacoities with the prisoners who, they say, were regular members of Madhub Chung the first approver witness's gang.

Before the dacoity commissioner, the prisoner, Hurrish, confessed freely and fully to the Nemazghur dacoity; but not (formally) to that at Malunpore. The prisoner, Jadoo, has pleaded *not guilty* throughout. Before me both have denied all the charges brought against them. The prisoner, Hurrish, declares now (for the first time during this trial) Mooktaram

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witness, No. 3, owed him a grudge, as he, prisoner, had prevented Mooktaram taking some leaves from a plantain tree of his. He says nothing against any of the rest who have testified against him, and calls two witnesses to character only, one of whom is dead and the other speaks ill of him.

The prisoner, Jadoo Ghose, also says Mooktaram wanted to rob a tree of his, and he, prisoner, resisted him, which made him in the first instance charge him falsely. He now says besides (for the first time) he had a quarrel with Nobin chowkeedar, witness No. 12, on account of some grass he, prisoner, had lost for which he fined Nobin 3 months chowkeedary dues. Madhub Chung, the approver, had also a spite against him on account of some plantains he wanted from prisoner, the latter would not give him. His two witnesses are also to character only; and of them the only one living declares, as far as he knows, he lives honestly, but he is connected with the prisoner both by caste and village relationship.

I consider it fully proved both prisoners have belonged to a gang of dacoits, and I beg to recommend they be sentenced each to imprisonment with hard labor for life in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) After a perusal of the record, we find the charges proved against both prisoners, not only by the evidence of the approver witnesses, but by independent proof corroborative of it, in the records of the specific dacoities charged. Their pleas in defence are in no way substantiated.

We sentence them to imprisonment for life in transportation, under Act XXIV. of 1843.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

RADHANATH PATOOLIA BAGDEE.

Hooghly.

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Case of  
RADHANATH  
PATOOLIA  
BAGDEE.

CRIME CHARGED.—1st count, dacoity with murder on the night of the 31st October, 1851 in the house of Nitro Gopal Mookerjee of Akharpore, thannah Punaghat, zillah Nuddea; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seeker Roy, deputy magistrate under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 16th January, 1857.

*Remarks by the additional sessions judge.*—The prisoner is charged with having been concerned in the dacoity at Akharpore on the 31st October, 1851, when the brother of the prosecutor was murdered and two others severely wounded by the dacoits; and also with having belonged to a gang of dacoits.

The approver witness, Bheem Bagdi, confessed to this dacoity on the 28th June, 1855, the prisoner not having been arrested till September 1856, when he named amongst his associates the prisoner, his fellow-approver witness, Kannay Ghose, and Kishto Moochee. His testimony on oath to-day is to the same effect; and he has now detailed the particulars of the affair as he did before.

The second approver witness Neelcomul Ghose, confessed to this dacoity on the 18th August, 1855. On the 15th May, 1856, some months before the prisoner now under trial was apprehended, he repeated the substance of his previous confession in evidence taken on oath in the case of Kannay Ghose. On that occasion he denounced the prisoner; his fellow approver, *Kishto Moochee* and others, as well as Kannay Ghose, as attached to the gang, and engaged actively in the robbery. In his evidence on oath to-day he has confirmed his previous testimony in every particular.

This dacoity, attended as it was with great and unusual violence, presents a series of incidents which persons, actually

concerned in it, could alone describe; but besides this, in confirmation of the direct evidence of the two approver witnesses we have as follows: Kishto Moochee was transported for this offence on the 13th June, 1856, before the prisoner's arrest, on

Prisoner convicted and sentenced under Act XXIV of 1843, the testimony of the approver-witnesses being corroborated by independent evidence.

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his own confession and in his confession he named the prisoner, both the approvers and Kannay Ghose, as of the party. Secondly, Kannay Ghose, who pleaded *not guilty*, has also been transported for this offence on the evidence of the two approver witnesses in this calendar. Thirdly, the first approver witness in Kannay Ghose's case named, and for the second time, (both times before the prisoner's arrest) the prisoner at the bar as his accomplice in the Akharpore dacoity. Kannay Ghose was, it appears, the leader of the band of which all the persons above named were subordinate members.

The prisoner has been known by reputation for a thief and dacoit for many years;\* and

\* Prosecutor's (witness No. 30's,) statement recorded 16th November, 1851, and old record.

† On 30th May, 1851, for the dacoity at Mundulliat.

has been both tried for dacoity, and released after commitment, for insufficiency of evidence† and imprisoned besides for "going forth with a gang for illegal

purposes." Prisoner's defence now in the court below is spite on the part of the approver witness, Bheem Bagdee; but though making before me the same defence he has produced witnesses to character only. These all speak ill of him.

The prisoner's admission that he lent the approver Bheem Bagdee money is almost enough, considering Bheem's well known character, to convict him of association. Prisoner also now, for the first time, says the second approver owes him a grudge on account of his (prisoner's) once having assisted in his recapture from jail. In the court below he declared there was no ill-feeling between them. I recommend that the prisoner be sentenced for having belonged to a gang of dacoits to imprisonment with hard labor for life in transportation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence of the approvers is fully corroborated, both as to the incidents of the dacoity, which were various and peculiar, and as to the parties engaged. It is so by the statement of the prosecutor the day after the dacoity, i. e. on 1st November, 1851, and by his evidence before the sessions now; as also by the statement of Kisto Moochee. The evidence of these approvers, as to this dacoity, was given in the case of Kannay Ghose, convicted for it, on the 13th June, 1856. The defence as to the enmity of the approvers is inconsistent, and in no way substantiated; that as to character, is contradicted by the witnesses, whom the prisoner calls, and by the record, No. 39, by which it is shewn, that in default of security for good behaviour, this prisoner was imprisoned for three years.

We sentence him to imprisonment for life in transportation, under Act XXIV. of 1843.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

BHYRUB SINGH.

Moorsheda-  
bad.

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Case of  
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Prisoner  
convicted on  
sixth and  
seventh  
counts, and  
sentenced to  
be imprisoned  
with labor and  
irons for seven  
years.

CRIME CHARGED.—1st, wounding the prosecutor Mr. W. J. Herschel, assistant magistrate in charge of the sub-division of Aurungabad, with intent to murder him, whilst engaged in the execution of his duty ; 2nd, being accomplice in wounding the aforesaid Mr. W. J. Herschel, assistant magistrate in charge of the sub-division of Aurungabad, with intent to murder him whilst engaged in the execution of his duty ; 3rd, intentionally maiming the said Mr. W. J. Herschel, assistant magistrate of the sub-division of Aurungabad whilst engaged in the execution of his duty ; 4th, being accomplice in intentionally maiming the said Mr. W. J. Herschel, assistant magistrate in charge of the sub-division of Aurungabad whilst engaged in the execution of his duty ; 5th, assaulting and wounding the said Mr. W. J. Herschel, assistant magistrate of Aurungabad whilst engaged in the execution of his duty ; 6th, being accomplice in assaulting and wounding the said Mr. W. J. Herschel, assistant magistrate in charge of the subdivision of Aurungabad whilst engaged in the execution of his duty ; 7th, resisting the assistant magistrate of Aurungabad in the execution of his duty, when he the assistant magistrate attempted to apprehend the prisoner No. 7, in accordance with a warrant issued against him in another case.

Committing Officer.—Mr. W. A. Spencer, officiating magistrate.

Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 31st December, 1856.

*Remarks by the officiating sessions judge.*—This prisoner was committed with prisoners No. 3, Rangutty Roy, No. 4, Shewbaluck Singh, No. 5, Gunganarajin Misser, No. 6, Mohabur Singh, No. 8, Bundhoo Singh, and No. 9, Huraman Singh, mentioned in statement No. 8, for December, 1856.

The particulars of this case are as follows. On the night of the 12th November last Mr. Herschel, assistant magistrate, being on his way from his outpost at Jungheepore to the sudder station at Berhampore, for the purpose of taking the oath of a justice of the peace, and knowing that he would have to pass the *diara* of Kabilpore, in thannah Mirzapore, where he was assured by No. 7, witness, Rustom Burkundaz, that a number of people were assembled for the purpose of committing a breach of the peace, in a dispute regarding that *chur* between a Mr. Herklotts and a



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Mr. Laruletta, determined to land and apprehend these assembled persons; and accordingly reaching the spot in his boat about 11 P. M. on that night, he landed with the darogah of that thannah and a number of burkundazes, and being shewn by that Rustom a small thatched house standing by itself on the *diara*, entered it and apprehended four up-countrymen, who were asleep in it, he sent them to the boat under charge of three burkundazes, and being informed by Rustom that there was another house further on, in which some more people would be found, he hastened on, accompanied by the darogah and burkundazes noted in the margin\* about a mile and there found another

\* No. 1, Prodeep.

„ 2, Saiem Sheikh.

„ 3, Nazim Aleo.

„ 7, Rustom.

„ 8, Manick.

house in which were four men on *guard* as Mr. Herschel expresses it; among these was one Bhyrub Singh, a tall strong up-countryman, who Mr. Her-

schel was told, was the head of the party; he and the other three were seized, upon which, Bhyrub thought told that it was the assistant magistrate and the police who had seized him, began screaming and calling for assistance most strenuously, and they were unable to silence him; hearing his cries answered in the distance Mr. Herschel hastened on his return to his boat, carrying these four men, Bhyrub still resisting and shouting, and occasionally throwing himself down; on reaching a small lane in a neighbouring village, the people, who had been answering Bhyrub's cries, ran up, armed with swords and *lattees*, and surrounded Mr. Herschel and the police; refusing to let them pass, and on Mr. Herschel saying he was the assistant magistrate and the police shewing their badges, they still refused them passage, on which Mr. Herschel seeing that many more were coming up and fearing a rescue, took a small stick from one of his burkundazes, (being himself quite unarmed) and struck at the most forward man; he warded off the blow with his shield, and at the same moment Mr. Herschel was set upon, wounded with swords, thrown down and severely beaten with *lattees*; the police all fled, and the four men, who had been seized escaped with their friends, who had rescued them, and Mr. Herschel rising, with difficulty managed to reach his boat and thence came on to Berhampore.

The officiating magistrate, Mr. W. C. Spencer, being informed of this outrage left the station for the spot, and reached it about 9 A. M. on the morning of the 14th November, and found the darogah, Doorgachurn, and the darogah of Dewanseraï engaged in the investigation of the case, and as none of his people or tents had arrived, he rode on to Jungheepore, leaving these darogahs to carry on their enquiries; and returning the next day about 11 A. M. the darogah, Doorgachurn, brought

up a number of men he had apprehended and also the witnesses ; their evidence was written down in his presence, but not read over to them then, as all the supposed delinquents had not been apprehended ; and the darogah was directed to send in all the parties to the station ; they appear to have reached the station on the 19th idem, and their evidence and defence was commenced that day, and concluded the next ; and the officiating magistrate, considering the prisoners named in the calendar to be guilty committed them for trial on the charges therein detailed.

There was no doubt of the fact of the apprehension on the night of the 12th idem of four men in the second house, and of the subsequent outrage upon Mr. Herschel, so that there remained the fact of the identification of the prisoners, to be determined.

The law officer was called in to sit with me on the trial and the prisoners were assisted by three vakeels, and the prosecutor by the Government vakeel, and the papers, &c., being most carefully gone into, the trial lasted four days.

The law officer acquitted the whole of the prisoners, and with the exception of No. 7, Bhyrub Singh, I concurred in his *futwa* and released all but Bhyrub Singh No. 7, and it is with regard to him that the case is now referred.

The tabular statement here given will shew the nature of the testimony given by the principal witnesses, and that on such varying and contradictory evidence no reliance, whatever, could be placed, and that, therefore, with the exception of Bhyrub Singh No. 7, all the prisoners were entitled to acquittal.

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|                                       | Mofussil evidence and date.                                                                                                                  | Foujdary evidence and date.                                                                                                                  | Sessions evidence.                                                                                             | Names of men seized in 2nd house.                                                                           |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| No. 1, Prodeep Burkandaz, recognized. | 14th Nov. 1856.—Nos. 3, 6 and 7, No. 6 was striking with a sword.                                                                            | 19th Nov.—Nos. 5, 6, 7 and 9. Nos. 5 and 6 struck with swords.                                                                               | Nos. 3, 5, 6, 7, 9 & 8. No. 5 struck Mr. Herschel with sword, No. 6 with <i>lattee</i> .                       | Nos. 7, 8 and 9.                                                                                            |
| No. 2, Saleem Burkandaz, recognized.  | 15th Nov.—Nos. 3 and 7, does not say who struck.                                                                                             | 15th Nov.—Nos. 3, 5, 6, 7, 8, 9, and No. 4 as seized in <i>first</i> house. No. 5 struck Mr. Herschel with sword, No. 6 with <i>lattee</i> . | Nos. 3, 4, 5, 6, 7, 8, and 9. Nos. 3 and 5 struck Mr. Herschel with sword, No. 6 with <i>lattee</i> .          | Nos. 4, 7, 8 and 9.                                                                                         |
| No. 3, Nazim Burkandaz, recognized.   | 14th Nov.—No. 3, does not say who struck Mr. Herschel, but that No. 3 and others released by the magistrate were striking about with swords. | 15th Nov.—Nos. 3, 4, 5 and 7. No. 5 struck Mr. Herschel with sword.                                                                          | Nos. 3, 4, 5, 6, 7, 9, 8. Nos. 5 and 6 struck Mr. Herschel with sword and No. 8 was in the <i>first</i> house. | Nos. 3, 7, and 9.                                                                                           |
| No. 4, Meechoo Doss, recognized.      | 14th Nov.—Nos. 3 and 6.                                                                                                                      | 15th Nov.—Nos. 3 and 6 and both struck Mr. Herschel with <i>lattees</i> .                                                                    | Nos. 3, 6, 9, and that No. 3 struck Mr. Herschel with <i>lattee</i> .                                          |                                                                                                             |
| No. 5, Nitye Halasana, recognized.    | 14th Nov.—No. 5, who struck Mr. Herschel with sword.                                                                                         | 15th Nov.—Nos. 3, 5, 7 and 9. No. 5 struck Mr. Herschel with sword and he was in <i>custody</i> of Mr. Herschel.                             | Nos. 3, 5, 7, and 9. No. 5 struck Mr. Herschel with sword.                                                     |                                                                                                             |
| No. 6, Prannath, recognized.          | 14th Nov.—No. 6.                                                                                                                             | 15th Nov.—Nos. 3, 5, 6, and that No. 5 with sword struck Mr. Herschel.                                                                       | Nos. 3, 5, 6, 8, 9. No. 5 with sword struck Mr. Herschel. No. 6 did nothing.                                   |                                                                                                             |
| No. 7, Rustom Burkandaz, recognized.  | "                                                                                                                                            | 19th Nov.—Nos. 4, 5, 7, and that Nos. 4 and 5 and two released struck Mr. Herschel with swords and <i>lattees</i> .                          | Nos. 5, 7, 8 and 9, did not see No. 4 strike Mr. Herschel.                                                     |                                                                                                             |
| No. 8, Manick Burkandaz, recognized.  | 14th Nov.—One released by the magistrate but none of these prisoners.                                                                        | 15th Nov.—Nos. 5, 6, 7, 8 and 9. No. 5 struck Mr. Herschel with sword.                                                                       | Nos. 5, 6, 7 and 9. No. 6 struck Mr. Herschel with sword.                                                      | In the foujdary Nos. 7, 8 and 9 and one released by the magistrate but in sessions names only Nos. 7 and 9. |

No. 18, witness Meechoo Haldar deposed in the sessions, that prisoners Nos. 3, 5 and 8, were in his boat fastened to the *diara*, and hearing the cries, they took *lattees* with them and ran off, and after a time returned with Nos. 6, 7 and 9, prisoners, and that No. 6, had a kind of spear with him. In the foudjary he stated that all these except No. 9, returned with him.

No. 19, witness Mehira Ali deposed in this court that he was on the opposite side of the river in his boat, and a number of men rushed down, seized one of his oars and crossed in the ferry boat, and that he distinctly recognized No. 5, prisoner, Gungannarain Misser, with a *lattee* and a sword. But No. 5, prisoner could not have been on the *diara* side of the river, and also have crossed in the ferry boat.

The witnesses to the recognition depose that the attacking party had their faces tied up with clothes (*gal-poti*) and therefore they could only have seen their mouths, eyes, and noses, and as they had never seen Nos. 5 and 6 before, and did not see them again till they saw them on the 19th or the 20th November, in the magistrate's court, where they had not their faces tied up it is impossible to believe that they could really have recognized these men, and therefore their identity and that of Nos. 3 and 4, is not established. Nos. 8 and 9, also are only shewn to have been seized in the second house asleep, and as they did nothing whatever, but merely escape, when the attack was made on Mr. Herschel, none of the charges in the calendar affect them, the whole of those prisoners therefore are acquitted.

I must now consider the evidence against No. 7, the prisoner Bhyrub Singh. A warrant was issued against him in another case and he was apprehended by Mr. Herschel in the second house, and clearly identified by that gentleman and the darogah Doorgachurn Roy, witness No. 20, and is shewn to have made a great resistance, and to have shouted violently for assistance, and though told that he was in the custody of the assistant magistrate and the police, he continued thus shouting, and on the attacking party coming up, he still continued calling upon them, saying "*Mar, mar*, we will see what kind of a magistrate it is," and therefore the whole attack upon Mr. Herschel was in fact caused by him; and although being in charge of the police he was unable to use any weapon, he undoubtedly urged on the attacking party, and produced their presence by his cries for assistance alone; and therefore, as without his act this outrage could not have been committed, he must be liable for it, his pleaders lay great stress upon the assertion that he was unaware it was really the assistant magistrate who had seized him, and therefore that he may have considered it merely an aggression on the part of his master's opponent Mr. Laruletta, and that therefore he was justified in resisting to the utmost

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any illegal attack upon him and that Mr. Herschell was acting illegally in seizing him in the middle of the night, as he was doing no harm, and nothing contrary to law in being in a house on the *diara*, but I am of opinion that this plea carries no weight, he was undoubtedly there to resist by force any attempt on the part of any one to touch the crops on that *diara*, whether those crops belonged to his master or not, and he was continually told that it was the assistant magistrate and the police who had apprehended him, and even if Mr. Herschel was acting illegally in seizing him, I cannot recognise any such doctrine as that a prisoner seized by the police is to be at liberty to judge of the illegality or otherwise of such seizure, and if he considers it illegal, to resist such seizure by force; he was apprehended by Mr. Herschel *bonâ fide*, Mr. Herschel considering that he was really acting according to law, and the prisoner was not the person to judge of the legality of Mr. Herschel's proceeding, I therefore consider the prisoner No. 7, Bhyrub Singh, to be a principal in this outrage on Mr. Herschel, and therefore convict him of the crime stated in the (5th) fifth count in the calendar, and with reference to the case of Fyzoollah Khan, decided on the 24th October, 1828, by the Sudder Nizamut Adawlut, I recommend a sentence of five years' imprisonment and a fine of 50 rupees to be paid within one month of the date of sentence in lieu of labor, and if not paid, to labor until the fine be paid or the term of imprisonment expire.

I submit herewith also a copy of a letter\* I have addressed to the officiating magistrate and with reference to the above

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\* From the officiating sessions judge of Moorshedabad to the officiating magistrate of Moorshedabad No. 275, dated the 31st December, 1856.

I have the honor to call your attention to the following remarks in the case noted in the margin\* the trial of which was this day completed by me.

\* Mr. W. J. Herschel, prosecutor.

Government Co-prosecutor

*versus*

Ramgutty Roy and others.

Charge

Assault on Mr. Herschel and wounding him with intent to murder, &c.

It appears that Mr. Herschel, the assistant magistrate at Aurangabad, learning that there was an assembly of people on the Kabilpore *diara* (concerning which a case between Messrs. Herklotta and Larraletta was pending in his court) took the opportunity of his being on his way to Berhampore on official business to land in the middle of the night of the 12th November on that *diara*, and apprehended four men in one house, and four in another, on the plea of their being illegally assembled; these men were doing nothing at the time, but remaining quietly in the houses, and were not therefore liable to arrest on a charge of illegally assembling, as the meaning of an illegal assemblage is a number of men collected together for the purpose of committing some act contrary to law; but the merely being asleep in different houses at night does not in itself, without any open shew of violence, prove that they were assembled for such purpose, and the fact, that against one of the men, viz. Bhyrub,

remarks I am of opinion that there were not sufficient grounds for committing the prisoners now released.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner had been charged before the assistant magistrate, Mr. Herschel, the prosecutor in this case, with being one of a party of *lattials* assembled to commit a breach of the peace; and warrants for his apprehension had been issued. Hearing that a body of *lattials* were assembled in the Kabilpore *diara* in the Moorshedabad district, Mr. Herschel, as

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a warrant was issued in another case, does not justify the apprehension of the other seven men; and the mere fact of the warrant having been issued does not justify Mr. Herschel's apprehending Bhyrub when neither he nor his police had the warrant with them at the time. Mr. Herschel therefore was acting beyond the law in arresting the eight men, and was injudicious in his measures for their apprehension. I request you will be so good as to bring this paragraph to that gentleman's notice.

The darogah, Doorgachurn Roy, who accompanied Mr. Herschel was most negligent and remiss in his proceedings, and in fact the failure of proving this case on the persons really guilty is in a great measure to be attributed to his mismanagement and carelessness. He took Mr. Herschel, after the assault, to his boat, and while Mr. Herschel continued his journey to Berhampore, the darogah instead of immediately returning to the village, following up the perpetrators of the outrage, endeavouring to obtain good satisfactory evidence against them or even questioning the parties with him and Mr. Herschel at the time of the outrage, contented himself with returning to Jangheepore with the first four men seized, and did not go back to the *diara* till late in the evening of the 13th and his even having been ordered by Mr. Herschel to take off those four men to the thannah was no justification for his own neglect, as none but a merely careless and incompetent policeman would have construed such order into an intimation that he himself was personally to take away the prisoners, when he could have easily sent them off by a burkandaz. He reached the spot again on the evening of the 13th, took no steps there to make proper enquiries, but waited for morning, when without taking any evidence, and without any information on oath, he started off to the Rajarampoor factory and apprehended all the up-countrymen he could find, viz. some twenty-two or twenty-three men, took them back to the *diara*, and confronting some of the people who had been with him at the time of the attack, took their depositions, thus at once closing up the avenue to any belief that might otherwise have been given to any alleged recognition had he conducted his enquiries in a more orthodox manner. He took that day the evidence of only six witnesses\* and except Nitye Halsahana (who said

\* Prodeep burkundaz.

Manick ditto.

Nazim ditto.

Mechoo Doss, Prannath Mundul  
and Nitye Halsahana.

he saw Gunganarain strike Mr. Herschel with a sword and *lattee*) not one of them named the two prisoners Gunganarain and Mohabeer as the persons who were actively engaged in striking Mr. Herschel. The darogah

made no report whatever on that date, the 14th November, of his proceedings, but sent a report on the 15th idem mixing up all the evidence and defence he had taken on the two days 14th and 15th, and making a confused medley of the whole, there is no clear continued statement of his proceedings from beginning to end, but

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assistant magistrate in that district accompanied by a darogah and party of police, proceeded to apprehend them. Eight armed men were seized. One of these, the prisoner Bhyrub Singh, resisted, and called loudly for help, and was answered by parties that they were about to come. As the assistant magistrate was conveying this and the other captured parties to the boat, they were attacked by a party of *lattials* from the Kabilpore village, who, though repeatedly warned that Mr. Herschel was the assistant magistrate, and being quite capable of knowing that

all his reports and papers seem to be written for the purpose of confusing instead of clearing matters. I think his conduct most reprehensible.

It appears that the evidence of some of the witnesses were written before you in the mofussil on the 15th November, but they were not read over before you and in their presence that day, but an order was written that as the whole of the delinquents were not present, the darogah was to send them and the witnesses to the sudder station; he did so, and on the 19th idem they appear to have come in, and on the 20th idem as certified by your *peshkar* they were examined; but it seems that their former written evidence only was read over to them, and they were asked to point out the persons they recognised; no particular questions bearing on the case seem to have been asked, as had they been so you could not have failed to remark the great discrepancies that existed in their evidence before the darogah and before you, although many of the depositions were written by the darogah the very day they were written before you in the mofussil; scarcely any of these further depositions taken before you on the 20th November bear any Bengalee date whatever, and the date written in English underneath them is the 15th November, the date the first part of them was written in the mofussil; they thus purport to record the fact of witnesses pointing out certain prisoners on a date, viz. the 15th November, when those prisoners had not been apprehended, as they were brought before you some on the 16th and some on the 19 idem; you also have sent up a witness No. 18, to depose as shewn in the calendar, to Gunganarain prisoner having been at the time of the disturbance on the *diara* side of the river in this witness's boat, and you also sent up No. 19, witness to shew that he crossed from the other side to the *diara* in a ferry boat; and again in the English calendar you have charged the prisoners with being accomplices, and in the Bengalee with being accessaries, and although this happens not to be of much consequence as the case has turned out, and as by Circular Order No. 109, of the 15th July, 1853, a person charged as a principal need not be charged as an accomplice, yet still the above were serious mistakes in your office, and such as you must in future exert your utmost energies to prevent. I much regret I did not discover the difference of the Bengalee word for accessory and accomplice in time to return the calendar for correction, but though the English and Bengalee calendars were carefully compared the work "*shohokareeta*" did escape my attention; the Government pleader was greatly to blame for not having pointed out this mistake to you.

You do not state any reasons for having considered the evidence of most of the witnesses unsatisfactory, regarding recognition by them of a number of prisoners whom you released, and yet you considered the same evidence to be trustworthy regarding the prisoners committed for trial, and I can discover nothing in the papers or evidence to account for that fact.

By request of the commissioner I have sent him a copy of my remarks in this case and of this letter.

the parties who accompanied him were police burkundazes, for they were in uniform, did not desist till they had severely wounded Mr. Herschel, and rescued the prisoner, Bhyrub, and the other parties apprehended with him. In his defence before the sessions judge, the prisoner pleads that he was not aware that Mr. Herschell was the assistant magistrate; but this plea cannot be admitted; for not only was he assured by Mr. Herschel, that he was the assistant magistrate, but the presence of the darogah and the uniform of the burkundazes could not have left a reasonable doubt on his mind as to this fact. From the evidence of the darogah it appears that Bhyrub Singh was no sooner released, than he picked up a bamboo, and prepared to join in the affray, but was prevented using it, as the darogah and a burkundaz also seized it and struggled with him for its possession. We therefore convict the prisoner Bhyroo *alias* Bhyrub Singh on the sixth and seventh counts, and sentence him to be imprisoned with labor and irons for seven years.

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Case of  
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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

GOVERNMENT, NADA DOSS AND OTHERS

*versus*

HUREE DOSS (No. 4,) RUGHOONATH DOSS (No. 5,) JOYNARAIN DOSS (No. 6,) CHOWDHRY DOSS (No. 7,) AND CHOOA DOSS CHOWKEEDAR (No. 8.)

Rungpore.

CRIME CHARGED.—1st count, wilful murder of Poosoo and wounding Hara and severe beating and other ill-treatment of Hazeer, Joynarain, Roychund and Netchroo; 2nd count, causing the death of Poosoo and Hara by severe beating, tying their hands and feet and other ill-treatment and wounding and severely beating of Hazeer, Joynarain, Roychand and Netchroo; 3rd count, aiding and abetting in the crimes charged in the first and second counts.

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and others.

Committing Officer.—Mr. W. L. Robinson, officiating magistrate of Rungpore.

Tried before Mr. A. G. Macdonald, officiating sessions judge of Rungpore, on the 20th December, 1856.

*Remarks by the officiating sessions judge.*—From the evidence it appears that on a Monday, the last in the month of Sawon, a quarrel took place at the Borooa'hat between the deceased Poosoo, and the prisoner No. 4, Huree Doss, the cause of this quarrel has not transpired. On the following Saturday, 2nd of Bhadoon, Poosoo and Hara deceased together with the wit-

Prisoners convicted; the sessions judge's reasons for acquittal being deemed incorrect on a review of the evidence.



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nesses Nos. 1, 2, 3 and 4, proceeded armed with *lattees* to the house of the prisoner No. 4, Huree, and commenced assaulting him. Huree to escape ran to the house of Rughoonath, the prisoner, No. 5, which is a few *russees* from his own, the others following and striking him, the neighbours of the latter then assembled in numbers and the two deceased and the witnesses Nos. 1, 2, 3 and 4, were in their turn severely beaten and confined in Rughoo's house, and the prisoner, No. 8, Chooa chowkeedar was despatched to the Nisbetgunge thannah to give notice of what had occurred. On the arrival of the thannah mohurrir he found Poosoo and Hara dead and the witnesses Nos. 1, 2, 3, and 4 in the house of the prisoner No. 5 with marks of violence upon their persons.

The witness No. 1, Hazeer Mahomed chowkeedar, states on the Saturday he was tying up cattle to the east of his house, where four or five persons unknown to him, told him that the deceased had been seized at Rughoo's house, that he, in consequence of this information, proceeded to the house of the prisoner, No. 5, taking with him the witnesses Nos. 2, 3, and 4, and there saw all the defendants beating the two deceased with sticks, &c. ; that seeing this he gave "*dohay*" when the prisoners abused him and then assaulted him and the other eye-witnesses, keeping them in confinement, until the arrival of the police next day.

The witnesses Nos. 2, 3 and 4, confirm this statement and speak to other ill-usages practised upon the two deceased persons, No. 2, Joynarain. " 3, Roychand. " 4, Netchroo. by tying their hands and feet with ropes to posts, and making water in their mouths when they asked for drink. Before the magistrate these witnesses stated that they saw the deceased, Poosoo and Hara, bound as described in this court; but they there denied that they had been then beaten. There are also other discrepancies in their evidence of less consequence.

The prosecutrix, Musst. Kandooree, mother-in-law of the deceased Hara, and the witness No. 11, Nako, her mother, and No. 12, Bydo Kusbee, the mistress of the deceased, Poosoo, and daughter of the witness No. 1, Hazeer chowkeedar, state that on the day in question, Poosoo taking Hara with him went to purchase medicine at the house of the prisoner, No. 5, which is about a mile from their own village and thus account for their presence at the place where they were killed. The magistrate placed no reliance on this evidence, and in my opinion, it is not trustworthy for the witness No. 14 (circumstantial evidence) states that he had heard of the quarrel

No. 14, Manick Chand.

at the *hat*, and that he afterwards heard that Poosoo and Hara had gone in the direction of Rughoonath's house armed with *lattees* and that a "*danga*" had occurred there, in which the deceased had been killed.

The witness, No. 15, says that he saw the witnesses Nos. 1, 2, 3 and 4, going in the direction, armed with *lattees*.

In the *foujdary* he stated that Poosoo and Hara were with them; this he denies in this court.

The witness No. 16 also saw Poosoo, Hara and the witness, No. 1, going with *lattees* and heard afterwards that the two

former had been killed.

The witness No. 17, saw the deceased persons with the witnesses Nos. 1, 2, 3 and 4, armed with *lattees* pass his house

on the Saturday in question; that he afterwards heard of the *danga* and that Poosoo and Hara had been killed.

The bodies of the deceased persons reached the station in a state which precluded the assistant surgeon from making an internal examination, but he observed bruises on the head, neck and arms of the deceased Poosoo, apparently inflicted with clubs, and he is of opinion that death may have occurred from concussion of the brain or fracture of the skull, though he cannot speak with certainty, not having been able to make an internal examination of the bodies, there was no laceration of the skin. The marks observed by Doctor Poole on the body of Hara were of a slighter nature, being bruises on the arms, neck, legs and back as if he had received blows from a stick here and there.

The real cause of the quarrel in the *hat* is unknown, though it undoubtedly took place and eventually led to the death of Poosoo and Hara. The prisoner, No. 4, accounts for it by saying that in the month of Sawon the darogah came to investigate a case of dacoity which had occurred in the house of one Roopchand, and that he took up his quarters in his, the prisoner's house, and that the deceased, Poosoo (who was apparently a man of bad character) was displeased at this and accused Huree, prisoner No. 4, of having given him a bad character to the darogah, and that, therefore, in the following month when they met at the Borooa *hat*, Poosoo abused and assaulted him, but this statement is not borne out by the evidence.

The prisoner No. 4, denies his guilt and states that on the day of the occurrence he was attacked by the deceased and the witnesses Nos. 1, 2, 3 and 4, together with about twenty other men, that he was wounded on the head and ran to Rughoonath's, his neighbour, eventually returning to his own house.

The prisoner, No. 5, also denies and confirms the story of the

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last prisoner, he himself received blows, one of which broke the bone of his finger.

Prisoner, No. 6, is the brother of prisoner No. 4, and states that he was ill at home and unable to rise, and that he did not go to Rughoonath's at all. This man is brother to the prisoner No. 4.

Prisoner No. 7, pleads an *alibi*. He is son to the prisoner No. 5.

Prisoner No. 8, the chowkeedar of the village, states that he was returning home about 12 o'clock on the day of the occurrence, when he saw a number of people at Rughoo's No. 5's; that he went there and found the deceased and the witnesses Nos. 1, 2, 3 and 4, sitting there, they were wounded, but he does not know by whom.

That the two deceased taking with them, the witnesses Nos. 1, 2, 3 and 4, proceeded on the day in question armed with *lattees* to the house of Huree, prisoner No. 4, in consequence of the dispute that had taken place between them at the Borooa *hat* two days previously, I consider established by the evidence, there can be no doubt too, I think, that they assaulted Huree and were themselves afterwards surrounded and severely beaten by a great number of persons, the neighbours of the prisoners and that Poosoo and Hara died in consequence of the beating they received. But the only direct evidence against the prisoners is that of the witnesses Nos. 1, 2, 3 and 4, these men were (together with the deceased) themselves the aggressors, and to account for their presence at Rughoo's, they depose falsely that they went there on hearing from persons unknown to them, that the deceased had been beaten and confined at Rughoo's house; this fact coupled with the discrepancies in their evidence before the magistrate and in this court, as above noticed, prevents, in my opinion, any reliance being placed upon their statement, even if the depositions of men, under such circumstances, can be received at all against those whom they themselves, in the first instance, attacked. That there is no better evidence regarding the death of the deceased is owing, no doubt, to the fact that the whole of the neighbours were themselves engaged more or less in the riot that ensued. Rejecting the evidence of these four witnesses there is nothing to show that the deceased were ill-treated after their capture which was reported at the *thanna* by one of the prisoners, No. 8, and that they did not die in consequence of the blows they received during the assault, nor is their evidence as to what persons inflicted the injuries which caused death.

*Futwa of the law officer, opinion and recommendation of the sessions judge.*—For the above reasons, I would release the prisoners for want of proof of their guilt, but the law officer considers culpable homicide to be proved against them, and I therefore refer the case for the orders of the superior court.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch

and H. V. Bayley.)—The law officer in this case finds the prisoners guilty. The sessions judge differs from him on the ground that “the only direct evidence against the prisoners is that of the witnesses Nos. 1, 2, 3 and 4; and these men were, together with the deceased, themselves the aggressors,” and on other grounds stated in his letter of reference above. We observe, however, that there is the evidence, i. e. of the women, Nos. 11, 12 and 13, who saw the dead bodies of Poosoo and Hara, and also the witnesses Nos. 1, 2, 3 and 4, bound, in Rughoo’s, (prisoner No. 5’s) house. And to that evidence the sessions judge does not refer in the grounds of his judgment. The sessions judge notices that witnesses Nos. 1, 2, 3 and 4, to account “for their presence at Rughoo’s depose falsely that they went there on hearing from *persons unknown* to them that the deceased had been beaten and confined at Rughoo’s house.” But the witnesses Nos. 2, 3 and 4, do not depose so at all. Witness No. 1, Hazeer chowkeedar, does; and says that it was at *his instance* the others went along with him. The sessions judge states, that there is nothing to shew that the deceased “did not die in consequence of the blows they received during the assault, nor is there evidence as to what persons inflicted the injuries which caused death.” The court would observe that the question is not whether there is *no* evidence to the above effect; but whether there is sufficient evidence to shew that *the prisoners were guilty* of the crime charged.

It is clearly proved that the dead bodies of the two deceased were found in Rughoo’s house; that there were marks of violence upon them; and that witnesses Nos. 1, 2, 3 and 4, were found there bound on the morning after the occurrence. It is admitted by some of the prisoners that these four witnesses were there, though they say that they the witnesses sat down in Rughoo’s house, and would not leave. These undeniable facts afford a very strong presumption in support of the direct evidence of witnesses Nos. 1, 2, 3 and 4, and it is requisite for the prisoners to rebut that presumption. The credibility of the witnesses is further supported by the testimony of the three witnesses Nos. 11, 12 and 13, and that testimony, as far as refers to these witnesses going to Rughoo’s house, as they described, is admitted by the prisoners; indeed it forms one of the grounds of defence, viz. that poison was given to the deceased by one of them: a plea contradicted by the civil surgeon as far as he could judge; and in no way substantiated by prisoners.

Next, the sessions judge speaks of the deceased and witnesses Nos. 1, 2, 3 and 4 as the aggressors, but the circumstances deposed to by the witnesses for the defence render their evidence on this and other points very doubtful. Those witnesses say twenty-five people or thereabout attacked Huree, who took shelter at Rughoo’s; that on Haree’s being thus attacked they

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saw two hundred or two hundred and fifty people collect in the neighbourhood; that though the witnesses are neighbours too, they do not know who *any* of those two hundred or two hundred and fifty were; that there was a riot; that the deceased died, they do not know how; and that witnesses Nos. 1, 2, 3 and 4, were hurt, they do not know how. This is obviously not the kind of evidence that can be taken to prove the deceased and witnesses Nos. 1, 2, 3 and 4, to be the aggressors, or satisfactorily to clear the prisoners.

On the whole we consider the third count proved against the prisoners; i. e. aiding and abetting in the crime charged in the 2nd count; and we sentence Huree and Rughoo as the leaders to five years' imprisonment with labor and irons, and the others to three years, their labor commutable on a payment of a fine of 50 rupees within fifteen days after intimation of this order.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

*Trial No. 2.*

Dinagapore.

GOVERNMENT AND CHUNDER MOHUN SURMA

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*versus*

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Case of  
ALEE GAR-  
REEWAN and  
others.RONGGA NUSHO (No. 69,) AND MADHUB HAREE  
(No. 70.)*Trial No. 3.*

GOVERNMENT AND MANICK JOTEE GOSAE

*versus*

Prisoners  
appeals con-  
sidered sepa-  
rately; and re-  
jected. Re-  
marks on Cir-  
cular Order  
30th October  
1846, and on  
different mea-  
sure of punish-  
ment awarded  
by sessions  
judge to pri-  
soners, whose  
guilt was of  
the same cha-  
racter.

KHIJMUTH NUSHO (No. 24,) ONU NUSHO (No. 25,) ALEE GARREEWAN (No. 26,) SACRATOO MOLLA (No. 27,) SOOKOOR NUSHO (No. 28,) NOOR NUSHO (No. 29,) SONAOOLLA (No. 30,) ATEEKOOOLLA (No. 31,) DILBUR (No. 32,) DEANUTHOOLLA (No. 33,) RAM PERSAUD (No. 34,) KOTIA FAKKEER (No. 38,) AND POHATOO NUSHO (No. 39.)

*Trial No. 4.*

GOVERNMENT AND AHUN MUNDUL

*versus*

ONU NUSHO (No. 40,) CHANDOO NUSHO (No. 41,) NOOR MAHOMED (No. 42,) MULLUNGGA (No. 43,) AND SADIR (No. 44.)

*Trial No. 5.*

GOVERNMENT AND DOMA ALIAS DOMUN PULLEE

*versus*

BUKSHEE NUSHO (No. 45.)

*Trial No. 6.*

GOVERNMENT AND PODO ALIAS PUDDO HAREE-  
ANEE

*versus*

ONU NUSHO (No. 47,) SAKRATOO (No. 48,) ALEE GAR-  
REEWAN (No. 49,) DEANUTHOOLLA (No. 50,) AND  
NOOR MAHOMED (No. 51.)

*Trial No. 7.*

GOVERNMENT AND DHURJONARAIN DOSS

*versus*

KHIJINUTH NUSHO (No. 52.) DEANUTHOOLLA (No.  
53.) ATEEKOOLLA (No. 54,) AKALOO (No. 55,) AND  
GOONJERRA NUSHO (No. 56.)

*Trial No. 8.*

GOVERNMENT AND SOOJAT NUSHO

*versus*

SADIR NUSHO (No. 63,) AND SAKRATOO MOLLA  
(No. 67.)

CRIME CHARGED.—*Trial No. 2.*—Nos. 69 and 70, 1st count, dacoity in the house of the plaintiff, Chundra Mohun Surma, and plundering therefrom property valued at Rs. 96; 2nd count, having possession of plundered property obtained by dacoity knowing it to be such.

*Trial No. 3.*—Nos. 24 to 34, 1st count, dacoity in the house of Manick Jotee and Phooljaree Debia and plundering therefrom property valued at Rs. 66-14-0; Nos. 24 to 34, 38 and 39, 2nd count, having possession of plundered property obtained by dacoity, knowing it to be such.

*Trial No. 4.*—Nos. 40 and 41, 1st count, burglary in the house of the plaintiff Soojat Nusho, and stealing therefrom property valued at Rs. 13-8-0, and Nos. 40 to 44, 2nd count, having possession of stolen property obtained by burglary, knowing it to be such.

*Trial No. 5.*—No. 45, 1st count, burglary in the house of the plaintiff, Doma *alias* Domun Pullee, and stealing therefrom property valued at 1 rupee and 1 anna; 2nd count, having possession of stolen property obtained by burglary, knowing it to be such.

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*Trial No. 6.*—Nos. 47 to 50, 1st count, theft of property belonging to Podo *alias* Puddo Hareeancee, prosecutrix, valued at 11 rupees, 6 annas; Nos. 47 to 51, 2nd count, having possession of stolen property, knowing it to be such.

*Trial No. 7.*—Nos. 52 to 56, 1st count, burglariously entering the house of the plaintiff, Dhurjonarain Doss, and stealing therefrom property valued at 16 rupees, 4 annas, 6 pie; 2nd count, having possession of stolen property obtained by burglary, knowing it to be such.

*Trial No. 8.*—Nos. 63 and 67, 1st count, dacoity in the house of the plaintiff Ahim Mundul and plundering therefrom property valued at rupees 35-10-0; No. 63, 2nd count, having possession of plundered property obtained by dacoity, knowing it to be such.

CRIME ESTABLISHED.—*Trial No. 2.*—No. 69, having possession of plundered property obtained by dacoity, knowing it to be such and No. 70, of dacoity.

*Trial No. 3.*—Nos. 24, 25, 31, 33, 38 and 39, having possession of plundered property obtained by dacoity, knowing it to be such and Nos. 26, 27, 28, 29, 30, 32 and 34, of dacoity.

*Trial No. 4.*—Nos. 40 and 41, burglary and Nos. 42 to 44, having possession of stolen property obtained by burglary, knowing it to be such.

*Trial No. 5.*—No. 45, burglary.

*Trial No. 6.*—Nos. 47, 50 and 51, having possession of stolen property, knowing it to be such and Nos. 48 and 49, theft.

*Trial No. 7.*—Nos. 52 to 54, having possession of stolen property obtained by burglary, knowing it to be such and Nos. 51 and 56, burglary.

*Trial No. 8.*—Nos. 63 and 67, dacoity.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 8th July, 1856.

*Remarks by the sessions judge.*—*Trial No. 2.*—This case was tried under Act XXIV. of 1843.

On the 18th of March, 1855, a dacoity was committed in the house of the prosecutor and property valued at Rs. 96 carried off, witness No. 1, Nazeera, admitted as an approver in this and several other cases, named the prisoners and others.

Plundered property was found on the prisoners, Nos. 69 and 70, and the latter confessed both in the mofussil and foudarry.

*Trial No. 3.*—This case was tried under Act XXIV. of 1843.

On the night of the 9th January, 1856, a dacoity was committed in the house of the prosecutor and property valued at Rs. 66-14 carried off, a clue to this and other cases was obtained from a man apprehended in a case of cattle theft and ultimately

the witnesses Nos. 1 and 2, were admitted as approvers. On the trial they denied their foudarry depositions and were accordingly committed under Section 5, Regulation X. of 1824. There, however, was sufficient ground for the punishment of prisoners Nos. 24 to 34, and 38 and 39, in the foudarry confessions, and plundered property being found on them. On most of them a consolidated sentence was passed, as they were convicted also in other cases in which they will be mentioned as having been punished in this one.

*Trial No. 4.*—In the month of Assin, 1262, a burglary was committed in the house of the prosecutor, and property valued at Rs. 13-8 carried off. The prisoner Onu No. 40, when apprehended in another case, confessed to this burglary and named his accomplices. I concurred with the *futwa* of the law officer in convicting the prisoners. Consolidated sentences were passed on Onu, No. 40, convicted also in calendars Nos. 7 and 10. On Noor Mahomed No. 42, convicted also in calendar No. 10. On Sadir, No. 44, convicted also in calendar, No. 13.

*Trial No. 5.*—A burglary was committed in the house of the prosecutor, exact date unknown, and property valued at Rs. 1-10 carried off.

A clue to it was obtained from "Onu," when apprehended in another case. I concurred with the *futwa* of the law officer in convicting the prisoner Bukshee No. 45, on his foudary confessions supported by the production of a portion of the stolen property.

*Trial No. 6.*—On the 9th October, 1855, property valued at Rs. 11-6, was stolen from the house of the prosecutor. I concurred with the *futwa* of the law officer in convicting the prisoners on whom consolidated sentences were passed, they having been convicted also in calendars Nos. 7 and 8.

*Trial No. 7.*—On the night of the 9th of November, 1855, a burglary was committed in the house of the prosecutor and property valued at Rs. 16-4-0 carried off. I concurred with the *futwa* of the law officer in convicting the prisoners. Consolidated sentences were passed on prisoners Nos. 52 to 54, they having been convicted also in calendar No. 7.

*Trial No. 8.*—This case was tried under Act XXIV. of 1843.

On the night of the 19th April, 1855, a dacoity was committed in the house of the prosecutor, and property valued at Rs. 35-10 carried off. The prisoners were convicted on their foudary confessions supported by the production of plundered property, and consolidated sentences passed on them as they were also convicted in calendars Nos. 7, 8 and 10.

*Sentence passed by the lower court.*—*Trial No. 2.*—Nos. 69 and 70, each to be imprisoned with labor and irons for seven years.

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*Trial No. 3.*—Each to be imprisoned with labor and irons, Nos. 28, 29, 30, 32 and 34, for seven years, No. 38, for four years and No. 39, for three years. The following prisoners were punished to a consolidated sentence, No. 24, for seven years in this and trial No. 7; No. 25, for seven years in this and trials Nos. 4 and 6; No. 26 for seven years in this and trial No. 6; No. 27, for seven years in this and trials Nos. 6 and 8; No. 31, for three years in this and trial No. 7, and No. 33 for seven years in this and trials Nos. 6 and 7.

*Trial No. 4.*—Each to be imprisoned with labor and irons No. 41 for five years and No. 43, for four years. Consolidated sentence was passed on the prisoners No. 42, for four years in this and trial No. 6, and No. 44, for seven years in this and trial No. 8. With regard to No. 40, see consolidated sentence in trial No. 3.

*Trial No. 5.*—No. 45, to be imprisoned with labor and irons for five years.

*Trial No. 6.*—Nos. 47 to 50; with respect to Nos. 47 to 50, see consolidated sentence in trial No. 3, and No. 51, see consolidated sentence in trial No. 4.

*Trial No. 7.*—Nos. 52 to 56; Nos. 55 and 56 each to be imprisoned with labor and iron for five years. With respect to Nos. 52 to 54, see consolidated sentence in trial No. 3.

*Trial No. 8.*—Nos. 63 and 67; with respect to No. 63, see consolidated sentence in trial No. 4, and No. 67, see consolidated sentence in trial No. 3.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It will be convenient in this case to give judgment in regard to the appellants individually. *Alee Gareewan*, advances no specific pleas in his petition of appeal, but prays that this Court may hear the record, as affecting him and pass judgment. As it has been ruled that such a prayer must be complied with, we have accordingly done so. As prisoner, No. 26, of calendar No. 7, of April 1856, this appellant was convicted of dacoity. He confessed before the magistrate. That confession was proved, and is corroborated by the circumstances stated in it, and by other confessions. Articles of property, Nos. 7 and 16, identified by the evidence for the prosecution, were found with him. Of the three witnesses produced by him to identify the property, two, Nos. 44 and 45, are his relatives and one of these two, Kantoo, his brother, has been called to identify, and has identified the property found not only with him, but also with many other of the prisoners. One witness, No. 46, speaks generally to prisoner's good character. We do not think this evidence sufficient to justify interference with this conviction. This same appellant, as prisoner, No. 49, of calendar No. 10, has been found guilty of theft. It is proved that he confessed it before the magistrate, and the articles, Nos. 18 and 19, were found with him and

identified by the witnesses for the prosecution, and the prisoner's witnesses do not sufficiently substantiate that they were bonâ fide prisoner's own. The sessions judge has passed a consolidated sentence of seven years' imprisonment, with labor and irons; and we see no reason to interfere with it, as we cannot enhance it.

*Sookoor Nusho*, prisoner No. 28, of calendar No. 7, appeals on the record only, in the same manner and in the same petition as the preceding prisoner. This prisoner confessed the dacoity both in the mofussil and before the magistrate; and his confessions are duly attested. Those confessions are corroborated by the proven circumstances stated in them, and in other confessions. Articles Nos. 21, 22 and 23, were found in his possession, and identified as the property of the prosecutor. Witness, No. 52, called by the prisoner to identify these as prisoner's own does so, but his other witness, Ameer Nusho, does not. The sessions judge has sentenced the prisoner to seven years' imprisonment with labor and irons. We see no reason to interfere.

*Noor Nusho*, prisoner No. 29, of calendar No. 7, appeals also on the record only. He also confessed to the dacoity in the mofussil and to the magistrate; and his confessions are duly attested; and borne out by the proven facts stated in the confessions of others. This prisoner is proved to have produced article No. 24 of the comparative statement from a stack of grain belonging to Purbée Bewa. This was duly identified by the witnesses for the prosecution. The prisoner stated the property was that of Sookoor, No. 8, but has failed to substantiate this plea. The sessions judge has sentenced him to seven years' imprisonment with labor and irons. We see no reason to interfere.

*Sonaoolah*, prisoner No. 30, of calendar No. 7, confessed before the magistrate; but before the sessions judge denied his guilt; and said that he had been denounced by Nuzeera from enmity. Articles, Nos. 25 and 26, were found with this prisoner, and identified as the property of prosecutor. This prisoner calls no witnesses to substantiate his defence. He appeals on the record. After a perusal and consideration of it, we see no reason to interfere with the sentence of seven years' imprisonment with labor and irons passed by the sessions judge on this prisoner.

*Ateekoola*.—This prisoner appeals on the record. He has been convicted as prisoner, No. 31, of calendar No. 7, of having possession of plundered property obtained by dacoity knowing it to be such. The prisoner stated to the magistrate that the articles Nos. 7 and 16, had been given to him as property obtained in dacoity by Asuk and Nuzeera (convicted by this Court on the 23rd), but that he had no witnesses to prove this. Those articles were identified as prosecutor's. The prisoner before the sessions judge denied his statement to the magistrate;

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pleaded that the property was produced and found by the darogah and Nuzeera, and that it was not his, prisoner's. But this plea is not substantiated. This prisoner is also convicted as No. 54, of calendar No. 11, for having possession of stolen property obtained by burglary. Articles Nos. 3 and 4, were found in that case with this prisoner; and identified to be prosecutor's. No defence was substantiated. The sessions judge has sentenced this prisoner to a consolidated punishment of three years, with labor and irons. We see no reason to interfere on the appeal.

*Dilbur*, prisoner No. 32, of calendar No. 7, appeals on the record. He confessed to the dacoity before the magistrate; and property identified as prosecutor's (No. 27, of the comparative statement) was found with him. Before the sessions judge he claimed that property as his own, and pleaded that Nuzeera had denounced him from enmity, on account of a demand for a loan of one rupee which prisoner refused. The property is not shewn to be prisoner's. We reject the appeal, and confirm the sentence of seven years' imprisonment passed on appellant.

*Deanutoollah*.—This prisoner appeals on the record. He is convicted as prisoner No. 33, of calendar No. 7, of having property obtained by dacoity knowing it to have been so obtained. Prisoner pleaded to the magistrate in this case that of the property found with him (Nos. 7 and 16), No. 7, was left in pledge with him by Onu; and No. 16, was bought by him from Nuzeera. To the sessions judge he urged that the darogah and the Nazir made him sign a blank paper and beat him; he therefore produced some property, which, he alleges, was his own; further that Asuck and Nuzeera are his enemies, and owed him money. The property is identified as prosecutor's, and the defence is not substantiated. He is convicted as prisoner No. 50, of calendar No. 10, of having possession of stolen property knowing it to be such. He was implicated by the confessions of other prisoners, and property, Nos. 14 to 17, duly identified as prosecutor's, was found upon him. Prisoner did not substantiate his defences: indeed the one in the magistrate's court was quite incompatible with that before the sessions judge. As prisoner, No. 53, of calendar No. 11, Deanutoollah is convicted of having possession of stolen property obtained by burglary knowing it to be such. Here he pleads that the property found with him, and identified as prosecutor's, was bought by him from Asuck and Nuzeera in order to prove theft against them. On being committed he stated that the property was his own, and denied his answer to the magistrate, but did not prove this plea. One of his witnesses is Kantoo, who is called to depose to the property found with many of the prisoners being their own, and the other is prisoner's brother. The sessions judge has passed a consolidated sentence of seven years' imprisonment with labor and irons. We see no reason to admit the appeal.

*Kotia Fukeer*.—This prisoner is No. 38, of calendar No. 7, convicted of having possession of property stolen in dacoity, and sentenced to be imprisoned with labor and irons for four years. Property identified as prosecutor's was found with this prisoner, who, at first stated to the magistrate, that he obtained it from Asuck's mother-in-law with instructions to conceal it: and then to the sessions judge, that the property was his own: but the witnesses whom he calls do not prove it to be so. His plea in appeal is that Asuck and Nuzeera were his enemies; that some person had put the property in his tank, and that prosecutor did not recognize it. But none of these pleas are proved on the record. We reject his appeal.

*Pukatoo Nusho*.—No. 39, of calendar No. 7, has been convicted on the same charge as the preceding, and sentenced to three years' imprisonment with labor and irons. This prisoner stated to the magistrate that he obtained the property found with him, and identified as prosecutor's, from Asuck. Before the sessions judge he stated that it was his own. The sessions judge did not think it sufficiently proved to be so, in the face of his own contradictory statement above-mentioned. He appeals on the record. We reject the appeal.

*Noor Mahomed* appeals on the record, without any special plea. He is convicted as prisoner, No. 42, of calendar No. 8, of being in possession of property stolen by burglary; and as prisoner No. 51, of calendar No. 10, of having possession of stolen property knowing it to be such; and has been sentenced by the sessions judge to four years' imprisonment. In the former case the articles Nos. 4, 5, 6 and 7, duly identified as prosecutor's were produced by this prisoner as given him by his brother Chundoo, a confessing prisoner in the case; but prisoner afterwards claimed the property as his own in the sessions. We think the proof of this is unsatisfactory, with reference to his contradictory statements, to the confession of Chundoo, and to the fact of Kantoo (before referred to) being one of his witnesses in the second case. The property, articles Nos. 1 to 6, were duly identified as prosecutor's; and as this is not satisfactorily disproved by prisoner, we see no reason to interfere with the conviction in either case.

*Mullungha*.—This prisoner also appeals on the record only. He is prisoner No. 43, of calendar No. 8, and is sentenced to four years' imprisonment for having possession of stolen property obtained by burglary, knowing it to be such. Article No. 3, found in his possession, was duly identified as prosecutor's. He admitted the receipt with guilty knowledge before the magistrate, but claimed the property as his own before the sessions judge. Referring to this, and that the witnesses are those called for many other prisoners to identify property as their's, we see no grounds to admit the appeal.

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ALFE GAB-  
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others.

*Sadir*.—This prisoner is No. 44, of calendar No. 8 and No. 63 of calendar No. 13. He has been convicted of receiving property obtained by burglary in the former, and of dacoity in the latter case; and has had a consolidated sentence passed upon him of imprisonment with labor and irons for seven years. In the case in calendar No. 8, he stated to the magistrate that he obtained the property from Onu, a confessing prisoner in that case; and to the sessions judge that it was his own. This last he did not satisfactorily shew.

In the case in calendar No. 13, he confessed to the magistrate; and the prosecutor's property was found with him. He appeals on the record. We reject the appeal.

*Bunshée Nusho*.—Prisoner No. 45, of calendar No. 9, is sentenced to five years' imprisonment for burglary. He appeals on the record. That shews that he confessed before the magistrate, and that prosecutor's property was found with him. The evidence for the defence is not in our opinion sufficient to outweigh that for the prosecution. We reject the appeal.

*Akaloo*.—Prisoner No. 55, of calendar No. 11. This prisoner confessed to the magistrate, and property proved to be prosecutor's was found with him. He stated to the sessions judge that Deanutoollah ordered that confession to be recorded, but that he never made it. He only calls witnesses to character. The sessions judge has convicted him of burglary and sentenced him to five years' imprisonment. We reject the appeal against this conviction; but in regard to the sentence we refer the sessions judge to a subsequent paragraph.

*Rungo Nusho*.—This prisoner as No. 69 of calendar No. 14, has been convicted of dacoity and sentenced to seven years' imprisonment. Prosecutor's property was found with him, which he declared that one Lukun gave him. But Lukun denies it, and there is no proof of prisoner's plea. We see no reason to admit the appeal.

As the prisoners Molungah No. 43, Bukshee No. 45, and Akaloo No. 55, convicted of burglary or of having in their possession property obtained by burglary and theft knowing it to have been so obtained, were committed for trial to the sessions only because the committal of other parties in the same trial was necessary, the sentence awarded by the sessions judge upon these prisoners is, with reference to Circular Order No. 234 of volume 3, i. e. p. 415 of Carrau's Edition, 30th Oct. 1846, illegal. The sessions judge is, therefore, directed to pass a legal sentence upon these prisoners. We do not see why the prisoners convicted in one calendar only and those convicted in one or more calendars should receive the same punishment. For instance Nos. 26, 27 and 33, receive seven years, being in the latter category; Nos. 28, 29, 32 and 34 the same, being in the former category.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND ETBAR MUNDUL ALIAS ETBAREE  
NUSHO

*versus*

JABULLA (No. 58,) KHATO SHAHA ALIAS SHAHUR  
NUSHO (No. 60,) AND SHUROOLLA ALIAS SAHUROOL-  
LA (No. 61, NON-APPELLANT.)

Dinagepore.

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Case of  
JABULLA  
and others.

CRIME CHARGED.—Nos. 58, 60 and 61, 1st count, burglary-  
ously entering the house of the plaintiff Etbar Mundul *alias*  
Etbaree Nusho and stealing therefrom property valued at rupees  
581-14-0; 2nd count, having possession of stolen property  
obtained by burglary knowing it to be such.

CRIME ESTABLISHED.—Nos. 58 and 60, having possession of  
stolen property obtained by burglary knowing it to be such, and  
No. 61, burglary.

Appeal re-  
jected, the di-  
rect and cir-  
cumstantial  
evidence being  
sufficient, and  
the pleas in ap-  
peal not sub-  
stantiated.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of  
Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore,  
on the 3rd July, 1856.

*Remarks by the sessions judge.*—On the night of the 13th of  
November, 1855, a burglary was committed in the house of the  
prosecutor and property valued at rupees 581-14-0 carried off.  
A clue to this case was obtained from a man committed in ano-  
ther case. The prisoner No. 61, Shuroolla confessed and  
named his accomplices and stolen property was found on the  
prisoners No. 58, Jabulla and No. 60, Khato Shaha *alias* Sha-  
hur Nusho. The prisoner No. 61, Shuroolla confessed also  
in the fouljary. The *futwa* of the law officer convicted prisoners  
Nos. 58 and 60, on the 2nd count, and No. 61, on the 1st  
count in which I concurred.

*Sentence passed by the lower court.*—Each to be imprisoned  
with labor and irons No. 58 for seven years, No. 61, for five  
years, and No. 60, for four years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G.  
Loch and H. V. Bayley.) The prisoners, Jabulla No. 58, and  
Khato Shaha *alias* Shahur Nusho No. 60, appeal. The former on  
the grounds that the charge against him has been brought by  
the prosecutor from ill-will; that the money produced from his  
cow-house was his own, and that he had buried it for fear of  
dacoits, his house having once been attacked. The latter ap-  
pellant merely refers to the record.

The record shews that a person of the name of Akaloo was ap-  
prehended on a charge of burglary and theft in the house of

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Dhoojo Narayan, and confessed to that and other robberies, and being asked about the robbery in prosecutor's house, stated that it had been committed by Jabulla and his gang. Jabulla was apprehended, confessed, and produced the money buried in his cow-house, and implicated the other prisoners. Besides the cash stolen, were two silver *hashli* with the name of "Jhurroo" father of the prosecutor, engraved on them. These the prisoner Jabulla sold, calling himself the said "Jhurroo," on the security of Mohun Nusho, to Turafut Sircar, and they were produced by the last named person, and identified by the prosecutor. The prisoner Khato also confessed, and produced Sa. Rs. 5, as part of his share of the plundered property.

As regards the pleas advanced in the appeal by the prisoner, Jabulla, we find from the evidence adduced by him that there was a dispute between the prisoner's father and the prosecutor's father some years ago about some *burgahs*, and that a dacoity once occurred in the prisoner's house; but the witnesses cannot speak to his having a large amount of cash, or having buried it for security's sake in his cow-house. We reject the appeal, finding nothing to justify an interference with the convictions and sentences, in regard to the appellants.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

## GOVERNMENT AND MANICKJOTEE

*versus*

Dinagapore. NAZEERA NUSHO (No. 13.) AND ASHO ALIAS ASHUK NUSHO (No. 14.)

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Case of  
NAZEERA  
NUSHO  
and another.

CRIME CHARGED.—1st count, dacoity in the house of Manickjotee and Phooljharee Debbia and plundering therefrom property valued at rupees 66-14-0; 2nd count, having possession of plundered property obtained by dacoity knowing it to be such; 3rd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagapore.

Appeal rejected; the evidence for the prosecution being sufficient. Attention drawn to Circular Order 2nd January 1854, No. 1.

Tried before Mr. J. Grant, sessions judge of Dinagapore, on the 25th August, 1856.

*Remarks by the sessions judge.*—This case was tried under Act XXIV. of 1843. The prisoners were admitted as approvers in the case of the prosecutor *versus* Khijinath and others, case No. 3, of statement No. 6, for July 1856, (also in several others) and having denied the truth of their deposition before the

magistrate were committed under Section 5, Regulation X. of 1824. Their confessions before the magistrate are proved by witnesses and supported by the production of plundered property.

*Sentence passed by the lower court.*—Imprisonment with labor and irons each for ten years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal, and pray a reference to the record. We find that the prisoners were apprehended on the charge of committing a dacoity in the house of Manickjotee, and confessed before the police and magistrate. They were offered a pardon on condition of giving on the trial a detailed statement of the robbery, which they agreed to do, but before the sessions judge they refused to give such evidence, and repudiated the confessions they had previously made, and were in consequence committed to the sessions to take their trial on the original charges. As the confessions of the prisoners before the police and magistrate are proved to have been given voluntarily, and as property identified as the prosecutors was found in their possession, we confirm the sessions judge's order, and reject the appeal. The magistrate's attention is called to Circular Order of 2nd January, 1854, No. 1.

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Case of  
NAZEERA  
NUSHO  
and others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

GUNNESH KOWRAH (No. 9.) MUDOO SIRDAR  
CHUNG (No. 10.) LALL MUSSULMAN (No. 11.)  
SHREESTEEDIUR CHUNG (No. 12.) AND MADHUB  
GHOSE (No. 13.)

Hooghly.

1857.

CRIME CHARGED.—1st count, dacoity on the night of the 3rd March, 1856, in the house of Gonach and Dhara of Malempore, thannah Hooghly, zillah Hooghly; 2nd count, dacoity on the night of the 7th April, 1856, in the house of Soofee Kurum Hossein of Shahpore *alias* Gazeendorga, thannah Bansbariah, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

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Case of  
GUNNESH  
KOWRAH  
and others.

Committing Officer.—Mr. J. R. Ward, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 12th January, 1857.

*Remarks by the additional sessions judge.*—Leaving out of consideration the Malempore dacoity, for reasons to be given

Appeal re-  
jected; pleas  
in appeal be-  
ing invalid,  
contrary to  
precedent, and  
not borne out  
by the record.



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hereafter, this trial is supplemental to that of Government *versus* Govind Dey Teele and others convicted by the Sudder Nizamut Adawlut, in accordance with the opinion of this court, on the 21st of October, 1856.

The Shahpore, or Gazeendorga dacoity was committed on the 7th April, 1856. The approver Madhub Chung, confessed complicity in it on 30th July, 1856, the very day after the first clue had been obtained to the perpetrators of the offence by the confession of the ring-leader in the attack, Govind Dey Teele, immediately on his voluntary surrender. Madhub Chung in his confession, in his evidence in Govind Dey Teele's case; and now in his evidence again in this court, has never varied either as to his accomplices or as to the incidents of the affair; and he has from first to last named as his accomplices all the prisoners in this calendar and his fellow-witness. His evidence, having been held to be perfectly reliable and circumstantially corroborated before, must be held to be so still. I have not his original confession before me, but I have the English duplicate or translation of it preferred by the dacoity commissioner himself; and I have besides an attested copy of his evidence recorded on the 18th September last.

The second approver witness Ishwar Ghose, was a fellow-prisoner in the former trial of Govind Dey Teele's; and his confession, on that trial in the dacoity commissioner's court, was repeated before me unreservedly and with a complete accuracy of detail. A copy of his last confession attested by myself is now before me. He denounced all through the prisoners now under trial and his fellow-approver, and besides confessed to a number of other dacoities.

The evidence of the above two approvers is corroborated by the confession in the lower court in the trial already alluded to of Doorgachurn Ghose, who compromised all the prisoners and the two approver witnesses in this calendar. It is still further corroborated by the collateral evidence on cross-examination of the first approver as to many other dacoities in which all the prisoners were more or less concerned. He has been so accurate in this respect as to leave no doubt that not only his testimony may, in every respect, be trusted, but also of the prisoners being professional dacoits and very old offenders as is stated of them.

The defences set up by the prisoners, go far to complete their condemnation. No. 9, does not know why he has been implicated in the present case. No. 10, has partly given before me the defence made in the lower court by prisoner No. 12, who has before me adopted *his* pleas; and for the rest has considerably varied the particulars he before advanced on other points. No. 11, to the dacoity commissioner, declared he could not account for the evidence produced against him: before me he says the first approver witness owes him a grudge for refusing

to give evidence for him on some occasion. Prisoner No. 12, said in the lower court, he gave evidence many years ago against a near relative of the first approver, which turns out to have been evidence recorded 3rd January, 1849, *in his favor*. For the rest, his defence is now what prisoner No. 10's was before, and *vice versa*. Prisoner No. 13, told the dacoity commissioner he had quarrelled with the approver Madhub, regarding a mistress of his (Madhub's;) and with the approver Ishwar about some rent; but now he says his quarrel with Ishwar was about some *sursoo* he had stolen from him.

Of prisoner No. 9's five witnesses one alone speaks well of him while two give him a decidedly bad character. No. 10's witnesses contradict his special pleas and say he is held in bad repute. No. 11's two witnesses merely say he is, as far as they know, an honest man. No. 12's three the same; while the witnesses examined on behalf of prisoner No. 13, not only do not corroborate his defence, but pronounce him to be a thief, and a *murderer of his uncle*.

With the separate and independent and (under the circumstances detailed at great length in Govind Dey Telee's case,) evidently uncollusive evidence of two approvers, corroborated by the previous confession of an accomplice in this case, the incidents of which with respect to the loss of and clue to the bank notes stolen were so uncommon if not remarkable; and also with my and the court's judgments in the former case before me, I have come to the conclusion, that the prisoners are clearly and fully proved to be guilty of having belonged to a gang of dacoits, and of having committed the Gazeendorga dacoity as charged; and I recommend that they be all sentenced to imprisonment with hard labor for life in transportation.

I have not gone into the particulars of the Malempore case, as I find that the prisoners are only denounced in it in confessions recorded after they were in arrest at this station. Such confessions, even though confirmed by subsequent well sifted testimony on oath, can never be satisfactorily received and acted upon.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Counsel for prisoners Nos. 11, 12 and 13, Baboo Anodapersaud.

Counsel for Government, Baboo Sumboonauth Pundit.

The Counsel for prisoners has urged: Firstly, that a conviction for one dacoity only will not bring the prisoners under the provisions of Act XXIV. 1843. But upon this point, the Court observe that it has been ruled otherwise in the case of Gopal Dollay; Nizamut Adawlut Reports, 25th October, 1852, Volume II. Part II. page 613. Secondly, that the evidence of two approvers only is insufficient for any conviction. But in this case corroborative evidence, in addition, has been tendered,

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and is on the record. Thirdly, that the prisoner No. 12, Shreesteedhur Chung, is named by one approver witness only. This, however, is not so. Fourthly, that the enmity of No. 12, with the approver-witnesses is proved. Considering the very contradictory manner in which the prisoners have asserted this, and that their witnesses do not generally substantiate it, we do not think this plea good.

The five prisoners in this case were apprehended on the following dates.

No. 9, on the 1st August; Nos. 10, 11, 12, on the 2nd ditto; No. 13, on the 26th ditto. The evidence against them is that of two approver-witnesses, of whom Madhub Chung, witness, No. 1, confessed to the Gazeendorga dacoity on the 30th July, and to the Malempore one on the 2nd August; and the other Ishwar Ghose, witness No. 2, confessed to the Gazeendorga dacoity, on 31st July, and to the Malempore one on 7th August.

The records produced to support their testimony in the Gazeendorga case consist of the confessions of Ramcoomar of the 31st July, and Doorgachurn of the 6th August. The evidence of the two approver-witnesses and the confession of Doorgachurn are clear and consistent, both as to the incidents of the dacoity, and the persons implicated, including the prisoners and approvers; and that of Ramcoomar as to the incidents and the complicity of prisoner No. 13. The Commissioner explains that as Ramcoomar had only just been released from ten years' imprisonment when the Gazeendorga dacoity took place, he would not know all his associates in it. The Commissioner certifies: "Every precaution was taken to prevent any of the confessaries holding any communication with each other, while their confessions were being recorded." The defences of the prisoners are inconsistent in themselves, and not substantiated.

We think the circumstances connected with the apprehension of the prisoners as shewn in the perwannah of the 31st July, are, with reference to the dates of the approvers giving their confessions, and those of the apprehension of the prisoners, and the distances of the residences of the prisoners from the Commissioner's office, satisfactorily explained in that Perwannah, and in the record.

We observe that the two approver witnesses and Doorgachurn and Ramcoomar have all been convicted by this Court of this dacoity.

Ramcoomar and Madhub on the 26th September, 1856, p. 664.  
Ishwar Ghose and Doorgachurn Ghose, on the 24th Oct. 1856.

Referring to the ruling on Gopal Dullaye's case before cited, we convict the prisoners under Act XXIV. of 1843, and sentence them to imprisonment with labor and irons in transportation for life.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND BHIKHA MUHOOREE

*versus*

KHIROO BURNEWAR (No. 1,) JICHOO BURNEWAR  
(No. 2,) AND JITUN\* (No. 3.)

Behar.

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Case of  
KHIROO BUR-  
NEWAR  
and others.

Prisoners  
acquitted, the  
evidence for  
the prosecu-  
tion being in-  
sufficient. Per-  
jury by one  
witness, and  
order thereon.

CRIME CHARGED.—Nos. 1 to 3 having stolen property in their possession valued at rupees 33-9, well knowing the same to be such, being a portion of property acquired by burglary and theft valued at rupees 117-9.

CRIME ESTABLISHED.—Nos. 1 and 2 having stolen property in their possession valued at rupees 33-9 well knowing the same to be such being a portion of property acquired by burglary and theft valued at rupees 117-9.

Committing Officer.—Mr. J. T. Worsley, deputy magistrate of Nowada with magistrate's powers.

Tried before Mr. T. C. Trotter officiating session judge of Behar, on the 19th December 1856.

*Remarks by the officiating sessions judge.*—A burglary took place in prosecutor's house on 11th October last, and he was robbed of property valued at rupees 117-9. The robbery, together with a list of the stolen property, was duly reported, but no discovery took place regarding it for some six days after-

- Wit. No. 1, Khemmarain Pooree.  
" " 2, Urjoon Panday.  
" " 3, Gummoo Koeree.  
" " 4, Gendoo Muhowree.  
" " 5, Ruttun Muhowree.  
" " 6, Taka Putwa.  
" " 7, Jitun Singh.  
" " 24, Bheekun Khan, Than-  
nah Mohurrir.  
" " 25, Jeytoo Singh, Bur-  
kundaz.

wards, when prosecutor, who was alone, happening to pass by Khiroo prisoner No. 1 and Jichoo prisoner No. 2's shop, (father and son) in a neighbouring village, spied a *tamee* or No. 9 a brass goblet lying there, which he recognized as the one he had been robbed of. On Khiroo's observing the prosecutor looking at it, he put it away, and prosecu-

tor left without further observation, but, from what he had thus seen, as well as his suspicions of the prisoners' characters he caused their house to be duly searched. By this search articles of the stolen property from Nos. 1 to 12 inclusive, were recovered and identified out of Khiroo and Jichoo's house, and No. 13 a dark blue *saree* out of Jitun Burnewar's, a connection of the other prisoners.

\* Acquitted.

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NEWAR  
and others.

Prisoners have always simply contented themselves by denying the accusation and declaring that all the recovered property belonged to their own household, in proof thereof citing numerous witnesses who deposed accordingly. They also took exception to the general and conflicting character of the evidence against them, but this is an argument in a greater degree applicable to that produced on their own side.

The jury\* unanimously acquit the prisoners.

\* Futeh Singh of Sooluhpore,  
zillah Monghyr.

Meer Afzul Hossein of Tesozee,  
zillah Behar.

Natookdharee Singh of Sunmeyer,  
zillah Patna.

Sheikh Buckut Alli of Dooal,  
zillah Behar.

The case is one certainly not attended with difficulties. The whole proof rests solely on the identity and recovery of the stolen property. The greater portion of it is of a very indistinct kind, which, however, does not prevent the witnesses on

each side swearing to it, as belonging to their own side. No. 1 consists of 1 maund 35 seers of cotton thread and Nos. 2 to 8 of pieces of cloth. The list shewed two maunds of cotton thread to have been stolen. There was at first some doubt thrown on plaintiff's recognition of property of such a kind, and though a portion of it said to have been returned to the prisoners as their own, but this seems to have been exaggerated by the witnesses

Wit. No. 1, Khemnarin Poorce.

" " 2, Urjoon Panday.

" " 3, Gunnoo Koeree.

the investigating officer and

to the recovery, shewing a disposition to side with the prisoners, their fellow-villagers, and has been sufficiently cleared up by the attending burkundaz. The cotton thread recognized by the prosecutor was clean, that rejected by him dirty; and he challenged the prisoners to produce their books in proof their being

Wit. No. 24, Bheekun Khan mohurrir.

" " 25 Jeythoo Singh burkundaz.

in the habit of dealing in cotton thread, which, though aided by counsel, they allowed to pass by unnoticed. The prisoners' witnesses' under cross-examination by the prosecutor, knowledge thereof, as well as of the prisoners' characters and dealings, is of the most lame general kind, which, as fellow-villagers they could easily endorse, is not entitled to much weight alone and does not in any way satisfactorily account for the description of goods thus recovered in Khirroo and Jichoo's house. It does not appear, that any goods of a similar kind formed portion of their stock in trade, or that any portions were returned to them as such after the search, which has never been charged with maliciousness, as it doubtless would have been had prosecutor recklessly pointed out their entire stock in trade. There is hard swearing on both sides as to the identity of particular articles with which it is difficult to deal. The *tamee* No. 9

is an ordinary looking brass vessel. Yet when I endeavoured to procure two or three of a similar kind, whereby to test the witnesses' recognition of it, I could not procure a suitable one, which could never have deceived my own unaccustomed eye. During the search this No. 9 was found in use in the prisoner's veranda full of water. Considering prosecutor kept his own counsel, when he first recognized it, and the daring conduct of receivers of stolen property in general, there may be nothing "per se" improbable in this. On the contrary prosecutor's truthfulness, in this respect, confirmed by all the witnesses generally under cross-examination, goes far in favor of the general honesty of the prosecutor's testimony, which, as isolated for other portions does not admit of corroboration by the evidence or examination of others. Khiroo's own account of his possession of this No. 9 is of a most general weak kind, unknown to his own witnesses. Viewing the prosecution, therefore, as a whole and the weakness of the defences on Khiroo and Jichoo's part, I find the prosecution credible, and adverse to the verdict. I convict Khiroo No. 1 and Jichoo No. 2 on the count charged and have sentenced them as below.

Only one article No. 13 a dark blue *saree* was found in Jitun prisoner No. 3's house. He pretends he possessed it in right of a marriage present, but that is very weakly supported by his witnesses, still the recovery of such an ordinary article is alone too slight on which to rest a conviction, and giving him the benefit of such doubts, in concurrence with the verdict, I acquit him.

All the recovered property to be restored to the prosecutor.

*Sentence passed by the lower court.*—Nos. 1 and 2 imprisonment for five years with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prosecutor was robbed on the 11th October, and on the 12th gave in a list of property stolen; i. e. of fifty-one articles. Of these, twenty-four were pieces of ordinary cloths; seven were *thalees*; and ten drinking vessels of bell metal and brass; one was two maunds of cotton thread; five were spoons of sorts; a *petarra*, an iron dish and some betel boxes made up the rest. Some six days afterwards, prosecutor accidentally saw and recognised some of his property in a shop. It does not clearly appear whether the shop was that of prisoner No. 1, Khiroo, the father, only, or of Khiroo and Jichoo, prisoner No. 2, his son, jointly. No property, however, appears to have been found as in any separate premises of Jichoo's. The property found and claimed by prosecutor consisted of one maund, thirty-five seers of thread, (No. 1, of the comparative statement), and cloths Nos. 2 to 8, a brass cup No. 9, two bell metal dishes Nos. 10 and 11, and a *kutoora* No. 12. We have endeavored to find how far these articles may be taken

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to agree with those in the list first given in by prosecutor on the 12th October, and the approximate result may be taken as follows:—No. 1, of the statement *may be* the No. 33 of the prosecutor's first list. No. 5 ; No. 25 ; No. 8, No. 29 ; No. 9, No. 11 ; No. 10, No. 1 ; No. 11, No. 2.

The witnesses for the prosecution depose to the articles Nos. 1 to 12, of the statement, being prosecutor's, and those for the defence to their being prisoners'; and both state that they know the fact from their being neighbours and occasionally using some of the articles. On the one hand there is no reason urged for a false or malicious accusation ; no books are produced by prisoners to prove whence they obtained the cloths ; and it is questionable whether, though the prisoners are shewn to have kept a general store-shop, it was one of that kind likely to have cloths of the description found. On the other hand, the witnesses for the defence speak to the good character of the prisoners ; Bikaree corroborates the assertion of the prisoner Khirroo, that he bought one of the cloths of Bikaree ; and Dookun deposes to having pledged the *thalee* No. 11 to Khirroo ; and Chundoo before the magistrate states that he sold to Khirroo the cloth Khirroo alleges he did ; (Article No. 5) ; though before the sessions judge Chundoo denies this, and his statement to the magistrate.

On the whole we do not think the evidence is sufficient for a conviction, and order the release of the prisoners.

We observe that Chundoo should be arraigned on a charge of perjury ; and the sessions judge will be good enough to proceed accordingly.

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PRESENT :

B. J. COLVIN, Esq., *Judge*, AND H. V. BAYLEY, Esq.,  
*Officiating Judge.*

GOVERNMENT AND NANGROO SONAR

*versus*

SONATUN CHOWKEEDAR (No. 2,) DHOORUB CHOW-  
KEEDAR (No. 3,) MOTEAH CHOWKEEDAR (No. 4,) PIRTUM CHOWKEEDAR (No. 5,) JULLALOO DEEN (No. 6, APPELLANT,) AND JHOOREAH CHOWKEEDAR (No. 7.)

Purneah.

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Appeal re-  
jected; on pri-  
soner's con-  
fessions, and  
discovery of  
stolen prop-  
erty, and failure  
of prisoner to  
substantiate  
his defence.

CRIME CHARGED.—1st count, Nos. 2 to 7, dacoity with beat-  
ing the prosecutor with a *lattee*, breaking open the lock of his  
chest and plundering property valued 263 rupees 14 annas,  
belonging to him; 2nd count, Nos. 2 to 6, keeping possession  
of property knowing it to have been obtained by dacoity.

CRIME ESTABLISHED.—Nos. 2, 3, 5 and 6, dacoity and plun-  
dering of property belonging to the prosecutor valued at 263  
rupees, 14 annas and keeping possession of property knowing it  
to have been obtained by dacoity; No. 4, keeping possession of  
property knowing it to have been obtained by dacoity; No. 7,  
dacoity and plundering of property belonging to the prosecutor  
valued at rupees 263, 14 annas.

Committing Officer.—Mr. B. R. Perry, deputy magistrate of  
Kishengunge.

Tried before Mr. G. Loch, sessions judge of Purneah, on the  
4th October, 1856.

*Remarks by the sessions judge.*—The prosecutor was asleep  
on a chest in his eastern house, when the dacoits, in number  
about fifteen or sixteen, entered his premises, pushed open the  
door of the house, which he occupied, threw him off the chest  
and while three of them sat upon and kept him down, others  
dragged the chest outside the house broke open the lock and  
pillaged the contents. On his attempting to speak one of the  
dacoits, whom he recognised as Dhooreep chowkeedar, struck  
him with a stick on the arm and in the face. He recognised  
Dhooreep, Biroa, Toofany, Thooreah, Hirdoa, Hoosea, and  
Sonatun, Dhooreep, Biroa and Hirdoa, kept him down. Hooseah  
and Thooreah dragged out the chest and Toofany held the  
*mushal* while Sonatun, who is the chowkeedar of the prosecu-  
tor's village, stood outside at the door-way with the dacoits.

The neighbours\* hearing the noise came to  
the premises and by the light of the  
torches recognised Dhooreep and *Thoo-  
reah*, Hirdoa and Sonatun, but they were

\* Gokool Sonar.  
Sheikh Churn.  
Ropoor Chund.



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and others.

\* Muddun.  
Cookrah.  
Deanut.

afraid to oppose the robbers and ran away. After the dacoits had left they and others\* went to the prosecutor's house. They saw the chest broken open and marks of blows on the prosecutor's face and arm, and he mentioned the names of the seven men whom he had recognised. The dacoity occurred on the night of Friday, the 30th May. On 1st June the police had arrived at Panchgatehee and proceeded to search the houses of the parties named by the prosecutor, but nothing was discovered. On 2nd, Sonatun chowkeedar brought a metal *thukni* and *dhoty* and stated, that on the night of the dacoity he went to the prosecutor's house and saw Biroa, Pirtum, Mahadeo, Chukergaddy, Toofany, Dhuroop, Thooreah and Hoosen and Hirdoa all chowkeedars, and others, committing the dacoity. He snatched the articles produced from Dhuroop, but made no mention of having done so, or of having recognised any of the robbers either to the prosecutor or his neighbours or to the malgoozar of the village. The darogah forwarded him to the deputy magistrate at Kishengunge as being concerned in committing the dacoity, and he made a similar statement to the deputy magistrate and excused himself for not attempting to oppose the robbers, because, when approaching the house, he was seized by two of them, whom he recognised as Pirtura and Chukergaddy, and he was prevented giving information at the thannah by Tharoo and malgoozar. On the 3rd of June, the darogah proceeded to mouzah Juppoo when the malgoozar Tumanoolah produced a *thali* and *kutterah* and stated, that after the mohurrir had searched Pirtum's house without success he told the malgoozar to be on the look out, lest Pirtum's women should clandestinely dispose of the stolen property. On the evening previous to the darogah's arrival, Musst. Bhugsurrya mother of Pirtum was observed to leave the house and go northward. She was followed by the malgoozar and some of the neighbours and the *thali* and *kutterah* found under her *chador*. On being questioned she declared the malgoozar's statement to be false, and that the articles belonged to her and had been pledged to the malgoozar on a loan in the previous Bysack. Pirtum was then apprehended and confessed to having committed the dacoity in company with Annut and Jurnrest, Dhuroop, Toofany, Sonatun, Jhoreash and some four or five others *Haris*, that the property was deposited in the house of Kishna Hari, chowkeedar of mouzah Koomea; but that Dhuroop who was the Sirdar took a gold chain and bracelet and a *thali* and *kutterah*. These two last mentioned articles he obtained from Dhuroop and they were found in his mother's Bhugsurrya's possession, when she was stopped by Tumanoolah malgoozar and the neighbours. The prosecutor, who accompanied the darogah, claimed the property.

On the 4th June, the darogah apprehended Thooriah and Dhuroop. The former confessed and implicated the parties named by Pirtum, and stated that Dhuroop had taken a gold chain and a silver bracelet, that the rest of the property was placed in Kishna chowkeedar's house to be delivered when the matter had blown over. Dhuroop denied the charge, but a gold chain and silver bracelet recognised by the prosecutor were found buried in a clump of bamboos close to his house. Pirtum and Thooreah repeated their confessions to the deputy magistrate, Dhuroop was examined by that officer on the 6th June, and denied all knowledge of the crime, but on 17th idem, he confessed his participation in the robbery and implicated Sonatun, Biroa, Toofany, Thooreah, Pirtum, Kishna, Booa and others. He admitted having received the gold chain and bracelet as his share of the plunder and having buried them in the clump of bamboos, and that he was drunk at the time. It was reported that Musst. Sookmutty the wife of Dhuroop chowkeedar, had absconded with much of the property. Information was brought to the jemadar, who was deputed to trace her, that she and Moteah Hari had come to Goolmah Hari brother-in-law's house during the previous night. She was apprehended on the 9th June, with Moteah, and on searching the house a red cloth was found concealed in the *choola*. She said that Moteah had given her the cloth; and on the night of the robbery Moteah and two or three others came to her husband's house and after drinking, the party went away. She denied having concealed any property and declared that she had left her house from fear. Moteah denied any knowledge of the robbery, but the darogah considered him *particeps criminis* from the statement of Sookmutty and from his having sent the police into the Morung on a wrong scent, pretending that Sookmutty had gone across the boundary. He afterwards produced some iron implements used by Soonars, buried in a clump of bamboos near Goolmah Hari's house, and declared that he had seen Sookmutty bury the articles the day before she was apprehended. The parties named in the margin\* were

\* Moteah Hari.  
Juroa Hari.  
Biroa Hari.  
and  
the son of Lengra  
Hari.

named by Sookmutty as having come to her house on the night of the robbery and left it in company with her husband, she was required to point them out and she pointed out Moteah, Biroa Hari, Jirow Hari, Jullaloodeen son of Dheeroa, a released convict. She said that Lengra

Hari's son came to the house and she pointed out Jullaloodeen instead of the son of Lengra. On being apprehended Jullaloodeen produced a *dhoty*, a *thali* and a *kutterah* and a check quilt, which he said was his share of the plundered property and he implicated Dhuroop. Thooreah and others. On the 13th June,

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Luckna burkundaz observed two women running from the village to a house outside the village, and suspecting that they were trying to conceal some property he gave notice to the darogah, who searched the house belonging to Musst. Doomnee and under a heap of dried cow-dung was found a brass *ghurrah* and *jhari*. Doomnee claimed them as her own, but was unable to prove her statement, and as the prosecutor recognised the articles as part of his property they and the women were sent to the deputy magistrate. At the sessions all the prisoners plead *not guilty*, and those who confessed before the darogah and the deputy magistrate of Kishengunge deny their confessions. The charges against Sonatun chowkeedar are proved by the recognition of the prosecutor and his witnesses, who recognised him among the dacoits at the time the dacoity was committed, by his statements to the darogah and deputy magistrate, and by his producing part of the plundered property, which he gave to the darogah. Against Pirtum and Thooreah besides the recognition of the prosecutor and witnesses are their confessions before the police and deputy magistrate, and the property found on Musst. Bhugsurrya the mother of Pirtum. He now repeats the story made by his mother, that the articles were pledged by her in Bysack last to Tumanooallah as security for a loan. This Tumanooallah denies, and it appears unlikely that had they been so pledged Tumanooallah should without any reason have given them up, and declared that he and others had found them on the woman's person when she attempted to escape. The guilt of Dhuroop is proved by the prosecutor's recognition of him at the time of the dacoity and from the property found in the clump of bamboos close to his house. He denied having committed the dacoity, both before the darogah and deputy magistrate, but subsequently made a full confession before the deputy magistrate and implicated the parties named by the other prisoners. The charges against Julalodeen are proved by his own confession and the production of articles by him, which he acknowledged to be his share of the plundered property, and which are recognised by the prosecutor as belonging to him. Of these a *dhoty* does not answer to the description of similar articles entered in the prosecutor's list. He mentions a new one of five *haths* long and some old ones dirty and in use. The *dhoty* produced by the prisoner is new and seven *haths* long. Against Moteah I do not think the charge of dacoity is proved. His name is not mentioned in the confessions made by the other prisoners, and he denies the charge. He appears to have been concerned in concealing the plundered property. After leading the police a wild goose chase into the Morung in search of Musst. Sook-mutty, wife of the prisoner Dhuroop, he was found sleeping with her in the house of Goolmah Hari her brother-in-law, and a

cloth recognised by the prosecutor, was found concealed in the *choola*, which Sookmuttery declared was given her by Moteah. He subsequently produced some iron implements used by Soonars buried in clump of bamboos near Goolmah Hari's house. I convict the prisoners Sonatun, Dhuroop, Pirtum and Julalooden of the charges on which they are committed, viz. dacoity and having possession of property knowing it to have been acquired by dacoity. I convict the prisoner Thooreah of the charge on which he stands committed, viz. of committing the dacoity. I convict the prisoner Moteah of the second charge of keeping possession of property knowing it to have been obtained by dacoity, and I sentence the prisoners Sonatun, Dhuroop, Pirtum and Thooreah, who are all village chowkeedars, each to ten years' imprisonment with labor in irons. Moteah Chowkeedar whose crime is of a less grave character and Julalooden, to imprisonment for seven years each with labor in irons. The prisoners are further sentenced to pay a fine of rupees 232 (two hundred and thirty-two) the value of the property of the prosecutor, which has not been recovered, to be realised by the sale of their property should they fail to pay the amount.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. B. J. Colvin and H. V. Bayley.) We see no reason to interfere with the conviction of Julalooden. His confessions before the darogah and deputy magistrate were recorded on the same day. Before the latter he made no complaint of ill-treatment by the darogah to induce him to confess, as he has done in the sessions court, and in his petition of appeal. It is proved that he himself delivered stolen property from his house which has been recognized as part of what was robbed from the prosecutor's house. The witnesses called for his defence say nothing in his favor. We reject the appeal.

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and others.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Nuddea.

ISHANCHUNDER ROY.

1857.

CRIME CHARGED.—Affray with aggravating circumstances.

CRIME ESTABLISHED.—Simple affray.

March 25.

Committing Officer.—Mr. A. Elliott, magistrate of Nuddea.

Case of  
 ISHANCHUN-  
 DER ROY.

Tried before Mr. G. D. Wilkins, additional sessions judge of Nuddea, on the 30th August, 1856.

*Remarks by the additional sessions judge.*—The prisoners in this case are all leading members of the well known and very influential Nakashiparah family in this district. It is admitted that the family is split up into two factions (one holding 6 and the other 9 annas in the estate) who have been suing one another in the civil court; and although it is asserted before me by prisoner's counsel that the opponents made up their differences before the 22nd February last, when the matter now under enquiry occurred, the parties themselves have never previously said so, there is no proof in support of the assertion and I am not inclined to put much faith in it.

Prisoner convicted; the evidence being sufficient, and the pleas in appeal invalid.

It appears that last February, there was an immense concourse of persons assembled at Nakashiparah to attend the *shrad* of the mother of one of the prisoners Baboo Damoodurchunder Roy; and that the day after the performance of the funeral obsequies there was a disturbance in the family arrangements regarding the place for feeding the beggars. The disputants were Baboo Chundermohun Roy (prisoner No. 1,) and his partisans on one side, and Baboos Ishanchunder and Damoodur (prisoners Nos. 3 and 4,) on the other. It is evident that brickbats were hurled and armed followers engaged (and that the family keep bands of *lattials* was lately brought judicially to my cognizance in another case now before the sudder court\*)

\* Government

*versus*

Hurris Ghose, Golakata.

on each side, but that any one was seriously injured or wounded either by clubs or by the discharge of mus-

kets, or that muskets were discharged at all offensively in furtherance of the quarrel, has not been proved.

The case originally came to light from the depositions on oath of two informers at the thannah the very day of the occurrence; each informer on the part of each faction, charging the other with an aggravated affray and assault. The mofussil

police, followed immediately by the deputy magistrate of Cutwa, lost no time in visiting the spot, and commencing an investigation, but it is to me sufficiently evident that immediately after preferring their counter-charges at the thannah, both parties saw the mistake they had made in bringing the affair, whatever its nature, to light, and coalesced ; for, on arriving at the place, not only Nakashiparah itself, but all the surrounding villages were found to be positively deserted ; and neither informers, nor Baboos said to be wounded, nor witnesses of any kind could be procured. The magistrate then took up the case himself, and employing his cotwali thannadar as his agent, secured the evidence of the witnesses named in the calendar. The characters of these witnesses, the delay in securing their evidence, and the mode in which they were induced to appear are all worthy of serious consideration in favor of their evidence not being implicitly trusted ; but then again it must be remembered that when men of such weight, wealth, and litigious and powerful character as these Baboos are brought to trial, it is not amongst their friends and neighbours evidence *can* be expected to be found against them, or any where else without much search, trouble, and promise of protection.

The prisoners disowned before me, through their counsel (Messrs. Doyne and Norris) the informers at the thannah ; but I have no doubt whatever but that they were authorised by them to act as they did. Who would take the trouble to prefer counter-charges of an affray and assaults at their *shrauds* against hostile branches of the family, but the family itself, and how was it the informers like all the rest of the Nakashiparah people under the authority of the prisoners, vanished the moment an official enquiry was commenced at the place. One of the informers too had before appeared on behalf of members of the family without being disowned.

The witnesses for the prosecution are twenty in number, of whom prosecutor has not examined four ; one is absent, and one recently dead, whose evidence in the lower court has been read and recorded\* (with the permission of prisoner's counsel) without being

\* No. 13.

formally attested, which it might easily have been. Of these witnesses all but four speak to the disturbance (" *dangah* ") only and do not implicate the prisoners as concerned in causing it. Three others had done so before the magistrate (Nos. 1, 2 and 3) but swerved in this court ; and of the three, one the worst (No. 3) I have committed for perjury. The four who still implicate the prisoners in the affair are Nos. 4, 5, 12, and 13, of these only one names the prisoner Srinath, and against *him* the prosecution during the trial was withdrawn. Of the other three prisoners, Baboo Ishanchunder is denounced by all four witnesses, Baboo Chundermohun by three, and Baboo Damoodur by two ;

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and with regard to the last two prisoners the evidence of the impeaching witnesses is perhaps less direct and explicit than against their fellow-prisoner Ishan.

The prisoners all plead *not guilty*; but of the witnesses cited by them to prove that there was only a row or "*golmāl*" on the day in question, not an affray or "*dangah hungama*," and that the prisoner Ishan was at the time in the sudder station, prisoner's counsel have only examined six. The four first admit they are dependents of the family, the fifth speaks to Baboo Ishan's presence at Kishnaghur at an early hour only of the morning of the affray sixteen miles off; and the sixth is the cotwali darogah examined, without any thing of importance being elicited as to the manner in which the witnesses were secured and how induced to give their evidence.

In concurrence with the law officer I acquit prisoners Nos. 1, 2 and 3; and convicting prisoner No. 4. Baboo Ishanchunder Roy of simple affray only, sentence him to pay a fine of 500 Rs. or to be imprisoned without labor or irons one and half months. This not being an affray for land, the magistrates could only deal with it under Regulation IX. 1807, Section 19; and had the power, if he thought fit, to convict.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Mr. Norris for the prisoner urges that the occurrence took place on the 22nd February, and that of the witnesses, who implicate his client, Nos. 4 and 5, did not appear till the 7th, and Nos. 12 and 13 till the 24th April; that a notice was given urging that whoever should give information or *evidence* should be rewarded, being a notice contrary to all legal principles; and that even the sessions judge himself spoke of the credibility of the evidence as a matter requiring serious consideration.

It is clear that the magistrate had much difficulty in getting evidence; and that he exerted himself to get information of who were present; and thus the delay ensued in adducing the evidence. But there was no notice stating that those who would give *evidence* should be rewarded, though the legal and ordinary notice of reward for information (*sundhan*) may have been issued. This, however, is only mentioned incidentally by the darogah in his evidence. We have carefully considered the whole proceedings, and the manner in which the witnesses, who implicate this appellant were sought out and produced, (not singly but with many other witnesses) and we think this riot and the criminality of appellant, as found by the sessions judge, sufficiently established. We therefore reject the appeal.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND RAMCHAND GHOSE

*versus*

NOBIN CHUNDER CHUTTOPADHYA.

Hooghly.

1857.

CRIME CHARGED.—1st count, wilful murder of Gooroochurn Chokhra son of the prosecutor Ramchand Gope for the sake of ornaments; 2nd count, theft of ornaments valued at rupees 2-15-6 from the person of the deceased.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 27th December, 1856.

*Remarks by the additional sessions judge.*—On the morning of the 21st September last, the prosecutor's son, Gooroochurn, a little boy 4 years old, was playing at the house of one Andee Koiburtnee with her son Obhoy Doss, a lad said to be 12, but probably not more than 9 or 10 years of age; when the prisoner came to the house and invited the deceased Gooroochurn to go home with him and he would give him a cocoanut. Some time after, the child's mother finding he did not return, sought her husband the prosecutor in his rice-field to enquire for the child, and to tell him he was missing. The two at once proceeded to the village and searched every where, but could gain no tidings of him. The next morning the child's body was found, stripped of its ornaments, partly concealed under some reeds or brushwood, on the edge of a small pond or tank in the prisoner's premises. The prisoner was suspected, and on being arrested, at once confessed he had enticed the little boy to his house to rob him of the ornaments he wore, and that he did rob him of them, but fearing the child would talk and betray him, he subsequently drowned him in the tank where the body was found. On being asked where were the ornaments he had stolen, the prisoner stated he had taken them to the village of Sukra two miles off, and sold them there to one Radhanath Poddar. The darogah on this proceeded to Radhanath's house at Sukra, and Radhanath at once produced the ornaments which had been worn by the deceased the day of his death, declaring he had purchased them from the prisoner for 2 rupees 15 annas 6 pie.

Prosecutor's house at Bundeepore is only ten *biswas* distant from prisoner's, in an easterly direction, Andee Koiburtnee's being between the two, and the tank where the child was drown-

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Prisoner con-  
victed, on his  
confessions,  
and strong cir-  
cumstantial  
evidence.



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CHUNDER  
CHUTTOPA-  
DHYA.

ed on the western or opposite side of prisoner's house, to which it belongs, with one *ghât* only for the inmates of that house to resort to. A little on one side is the house of Paunchoo Chuttapadhya, a relative of prisoner's, where the corpse was carried by the witness Chundeechurn, the prosecutor's nephew, on his (Chundeechurn's) finding it early on the morning after the murder. One Dinoo Napit was with Chundeechurn when the body was searched for and found by the former, but neither Paunchoo nor Dinoo have been produced as witnesses.

It appears that the fact of the child having been missed was at once reported to the Phaurree burkandaz, who came first on the ground, but he too is not a witness. The darogah after the finding of the body lost no time in making his enquiry. He took down the prosecutor's statement the day after the murder. On the 23rd (the day the child was lost was the 21st) the prisoner had made his confession and was sent in to the deputy magistrate, and on the 24th he reached that officer's court. The darogah's final and complete report of the case, detailing the charge, and giving an abstract of the evidence for the prosecution and the prisoner's defence, was transmitted to the deputy magistrate and the investigation closed on the 25th. Before the deputy magistrate the prisoner denied the murder, but allowed he had stolen the ornaments from the child's body on seeing it afloat on the tank near his house.

The weight of the evidence, which is all circumstantial, consists of the testimony of three witnesses named in the margin,\* and of the prisoner's own admission as follows:—

\* Obhoy, No. 18, Chundiechurn,  
No. 17, Radanath, No. 14.

The boy Obhoy an intelligent lad, whose evidence I have taken under the provisions of Act II. 1855, Section 15, was, it appears, asked soon after he was missed, what had become of the little boy Gooroochurn with whom he had been playing the day he died, when he said, as he has since twice consistently repeated, that the prisoner came to his (Obhoy's) mother's house while he and deceased were playing, and enticed the latter away, under promise of making him a present of a cocoanut; and that he had not seen him afterwards.

Chundeechurn the prosecutor's nephew, who discovered the corpse and procured the prisoner's arrest on suspicion, said at first he too had seen the prisoner entice his little cousin away from Andee Koiburtnee's house the day he was last seen alive, but before me he denies this. From the evidence of the boy Obhoy; from the fact that the first day the prisoner was not at home, when the child was missing suspected and seized; and from the probabilities of the case, I am persuaded he did *not* see the inveiglement. He has, however, given his account of the search for, and of the discovery of, the body consistently

throughout. On being shewn the ornaments, he at once recognized them as those which had been worn by deceased.

The third witness is Radhanath Poddar, who was in the first instance put on his defence by the darogah as an accessory. He has throughout acknowledged the prisoner brought him the ornaments the day the child lost his life, and that he paid prisoner for them 2 rupees 15 annas 6 pie; the prisoner in his first confession having stated Radhanath had only given him one rupee for them.

The other, and I think less important evidence, is that of the medical officer who examined the body, but who found it so far advanced in decomposition that all he could see was the eyeballs and tongue protruded, which induced him to think the deceased had died a violent death, whether by being held down by the neck under water, or by being strangled on shore,—of the two probably the first. The witnesses to the finding of

\* Nos. 15 and 16. the property\* did *not* see the darogah arrive at Radhanath's

nor hear him ask Radhanath as to the things he had bought of prisoner, nor see Radhanath produce them, nor hear Radhanath say from whom he had got them. All they say is that the darogah at Radhanath's door shewed them the ornaments he said Radhanath had delivered up to him, Radhanath all the time standing by and saying nothing. Two of the witnesses†

† Nos. 1 and 2.

again to the *sooruthal* merely say they heard that prisoner was suspected of having murdered the deceased for his ornaments. I think I have said enough to shew that both in the non-production of persons who should have been made witnesses, and in the production of other persons who should not have been made witnesses to the matters for which they are entered in the calendar, the deputy magistrate has made a somewhat slovenly commitment, and the Court will further see how very discredibly he has drawn up his abstract of the examination and grounds of commitment. To this I must add that if the prisoner is really a person of a debauched character, as stated by prosecutor and others, and one who is known to have been previously suspected on good grounds of robbing children, that matter should have been more fully investigated, and if true, supported by evidence.

The prisoner in his defence before me denies every thing, and states (now for the first time) that the prosecution has been got up by one Govind Chuckerbutty, who is the village *gomash-ta*, and who is jealous of him, the prisoner, inasmuch as the neighbouring brahmins visit the prisoner in preference to him on account of the latter's inferior caste. He adds that Radhanath should have been made by the darogah to produce the ornaments in the presence of two trustworthy witnesses; that

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he was not at home the day the child died ; and that he made his previous confessions from being starved into doing so. He calls no witnesses.

Neither I, nor the law officer, have the slightest doubt of the prisoner's guilt ; and we are unanimous in convicting him on strong presumption of the murder of the deceased child, Goo-roochurn, for the sake of his ornaments. I do not see the slightest ground for any mitigation of punishment, and I recommend that the prisoner be sentenced capitally.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The deceased child of four years old was last seen alive with the prisoner, and the body was found in prisoner's tank, with marks of violent death, as the civil surgeon deposes. The prisoner confessed to the police that he had drowned the child, and taken his ornaments. He confessed to the deputy magistrate that he had taken the ornaments, having found the corpse floating on the tank. On both occasions, he stated that the ornaments had been sold by him to one Radhanath. Radhanath deposed that they were sold to him by prisoner ; and that he (Radhanath) made them over to the darogah. The statement of the boy, Obhoy, with whom deceased had been playing, corresponds with the admission of the prisoner before the deputy magistrate that the prisoner had enticed away the boy by the promise of a cocoanut. The prisoner's defence in the sessions is in no way substantiated. We convict the prisoner of wilful murder, and sentence him to be hanged.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND GOLUCK CHUNG

*versus*

BHYRUB CHUNDER GOOHO.

Dacca.

1857.

CRIME CHARGED.—Wilful murder of Surroop Chung.

Committing Officer.—Mr. J. H. Ravenshaw, officiating joint-magistrate of Furreedpore.

Tried before Mr. E. S. Pearson, officiating sessions judge of Dacca, on the 3rd January, 1857.

*Remarks by the officiating sessions judge.*—The circumstance of the case as related by prosecutor, deceased's son, are as follows. That on the evening of the 10th Assin, he, his father and wit-

- \* No. 5, Soobul Chung.
- " 6, Goreeboollah.
- " 7, Petamber Mundul.

nesses\* Nos. 5, 6 and 7, were all at deceased's house. That at about four or six *dunde* of the night the prisoner came near

Prisoner convicted on violent presumption.

the house and called to deceased, "Why have you abused me?" That deceased denied, that a dispute ensued, when prisoner getting angry went up to deceased and struck him in the breast with a *surkee*. Deceased cried, "*morilam*" and fell. Prosecutor and the rest seeing this ran and took him up, but he died almost immediately after.

The witnesses Nos. 5, 6 and 7,† deposed to the above effect, only that they did not see prisoner. They were some ten or twelve *nulls* distance, i. e., on the verandah of the house, while deceased and his son had gone forward to the *ghat* to wash their hands after eating: and No. 7, in fact only mentions prisoner as "some one calling," and that he learned his name from Goluck prosecutor whom he asked, "Who is that calling?" The other two recognised him by his voice. In the mofussil it seems that they all deposed to having *seen* the prisoner, and from their depositions before the joint-magistrate one would gather that they did see him, though they did not say so plainly, and the joint-magistrate will be instructed to see that his omlahs take down depositions more carefully.

The cause of the dispute alleged by prosecutor is, that the same day his father, deceased, had cautioned his brother-in-law, Oodaie Chung's wife, Tripoora, witness No. 10, against allowing prisoner to visit her so much, as it would create scandal, and that Tripoora repeated this to prisoner. This, prosecutor heard from the woman herself afterwards. Witnesses Nos. 8, 9 and

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\* No. 8, Seedam Chung.  
 „ 9, Ramchand Chung.  
 „ 11, Sumbhoonath Mundul.

11,\* distinctly state that they heard the voices of deceased and prisoner quarrelling, and that very shortly after hearing crying

from deceased's *baree*, went there and found him speared through the breast, from which wound he died then and there.

Witness No. 10, Tripoora, deposed to the fact of prisoner having often visited her, and that deceased had cautioned her against receiving him that day; that the same evening prisoner came to her house, and she told him what deceased had said; that he went out in a rage; that a little after she heard deceased and prisoner quarrelling and prosecutor crying that prisoner had killed his father.

The sub-assistant surgeon, witness No. 4,† stated that deceased had received a spear-wound penetrating into the heart, which must have caused almost instant death.

The weapon was not found, prisoner pleaded *not guilty* and set up his defence an *alibi*, and also alleged ill-will towards him on the part of Bissessoree Dassea, wife of Ramcoomar Goocho, his partner in land, who, he says, got up this false case against him. He also urged that Tripoora is a bad woman and that deceased and others used to visit her. His *alibi* was this, that he went that morning to Bhawul *hat* and returned at about six *dunds* of the night to his house, and then learned that deceased had been murdered. Two of his witnesses Nos. 17

‡ No. 17, Sheik Joydee.  
 „ 20, Heshabdee Musalchee.

and 20,‡ deposed that one day in Assin (No. 19,§ says Assin or Bhudro) prisoner returned in the same boat with them (the boat is witness No. 17, Sheikh Joy-

dee's) from Aksoor *hat*, and that they put prisoner out at his own *ghat* about six *dunds* of night; after which they heard that deceased was dead.

He did not examine the remaining witnesses to the defence.

Prisoner was apprehended near Sheikh Joydee's house whither he had fled.

The law officer gave a *futwa* of acquittal on account of the absence of eye-witnesses and discrepancies in the circumstantial evidence of the witnesses Nos. 5, 6 and 7.

In this finding, I cannot concur, as I do not consider the discrepancies to be material. In the *mofussil* these three witnesses are said to have witnessed the deed. Here two of the three say they recognised prisoner by his voice, and the third learned that the party calling to deceased was prisoner from Goluck Chand's son *at the time*, the value of the evidence is thus doubtless *diminished*, but it is not, in my opinion, *vitiated*. Their recognition too of prisoner by his voice is sup-

ported by witnesses Nos 8, 9 and 11,\* who distinctly recognised prisoner by his voice as the party quarrelling with deceased, immediately after which they went to the spot and found

deceased speared through the heart. This recognition of a person by his voice by parties who *knew him well* and live *close by* is surely very nigh akin to ocular recognition. I consider, therefore, that the identity of prisoner with the party who quarrelled with deceased immediately before deceased fell wounded is established, and hence that a violent presumption amounting to proof arises that he is the person who gave deceased his death-blow. This presumption is strongly supported by the evidence of witness No. 10, the woman Tripoora, whom, be it observed, prisoner has not cross-questioned, and whose evidence is not shaken? nor in fact affected in any way by the evidence of the witnesses to the defence.

I consider the charge of wilful murder proved against the prisoner, and seeing no extenuating circumstance whatever in the case, would recommend that he suffer capital punishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prosecutor Goluck Chung is the only eye-witness to the commission of the crime. The night was very dark, and the prisoner was only recognized by the witnesses who were in prosecutor's house by his voice raised in altercation with the deceased before he stabbed him; and one only of these witnesses, Goreeboollah, who was a neighbour, knew the voice, the other two being obliged to ask the prosecutor who it was that was speaking. The evidence of Musst. Tripoora shews that the prisoner was with her at about four *dundos* (about one hour and a quarter) of the night in question, *i. e.* a short time before the murder took place; that as the deceased Soroop objected to the prisoner's visits to her, (Tripoora,) and had that very day told her to prohibit them, she would not admit him, (prisoner), and told him this as the reason; that the prisoner went away very angry, threatening Soroop; that shortly after she heard him and Soroop disputing, and then the sound of lamentation in Soroop's house. The distance of the prisoner's house and Tripoora's from that of the deceased was so small, as quite to admit of prisoner having committed the act in the interval deposed to by the witness. The prisoner, in his examination before the magistrate, says he returned from a *haut* about six *dundos* of the night, and hearing people crying in the prosecutor's house he went there, and found the body of the deceased Soroop lying near the water's edge, and observed a wound in his chest, and the next day he heard that Soroop was dead. We convict the prisoner on strong presumption of having committed the murder, and sentence him to be imprisoned for life in transportation beyond sea.

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Case of  
BHYRUB  
CHUNDER  
GOORO.

PRESENT :

G. LOCH, Esq., *Officiating Judge.*

## GOVERNMENT

*versus*

Hooghly.

TINCOWREE DHENG.

1857.

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Case of  
TINCOWREE  
DHENG.Appeal re-  
jected. Re-  
marks on re-  
cord of original  
depositions in  
cases of per-  
jury.

CRIME CHARGED.—Perjury in having on the 9th May, 1856, intentionally and deliberately deposed under a solemn affirmation taken instead of an oath, before the deputy magistrate of Serampore, that “*he saw the deceased beaten by the prisoners,*” and in having on the 11th June, 1856, again intentionally and deliberately deposed under a solemn affirmation taken instead of an oath, before the additional sessions judge of Hooghly, that “*when he reached Doyah’s house he saw deceased rolling on the floor, but did not see the prisoners, they having fled before he arrived.*” “*I heard of it from the deceased himself,*” such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Wilful perjury.

Committing Officer.—Mr. K. H. Stephen, deputy magistrate of Serampore.

Tried before Mr. G. D. Wilkins, additional sessions judge of Hooghly, on the 23rd July, 1856.

*Remarks by the additional sessions judge.*—The case in which this perjury was committed, has been described in another trial for perjury held this day, in which one Belassy Dossy was the accused party. The prisoner deposed on oath on the 9th May 1856, that on hearing the noise of an affray at Doyah’s house he went there, and seeing the prisoners beating the deceased, Chintamony, released him from them. Before me he deposed and persisted in deposing, that he reached the house after Chintamony had been beaten; that the prisoners had run away before he arrived; and that he learnt who had assaulted him from Chintamony himself. His defence before me is, that he never made two contradictory statements, and that he is an ignorant villager.

He cites no witnesses, and his defence is, in my opinion, quite worthless. In concurrence with the law officer, I convict the prisoner of wilful perjury on a point most material to the issue of the case, in which he was a witness, and I sentence him to 3 (three) years’ imprisonment with hard labor, but without irons, from this date.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. G. Loch.) The Court has perused the proceedings in this case with the explanations submitted by the additional sessions judge

dated 21st November and 6th December, 1856 in reply to the Court's Resolutions of 5th November and 26th November 1856, Nos. 938 and 998\* v. Note.

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TINCOWREE  
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\* *Resolution of the presidency court of Nizamut Adawlut No. 938, dated the 5th November 1856, (present : Messrs. H. T. Raikes and J. H. Patton.)*

The Court, having perused the proceedings in the case of Tincowree Dheng, appellant, sentenced to three years' imprisonment with hard labor, by the additional sessions judge of the 24-Pergunnahs, Hooghly, &c., on the 23d July last, observe that the prisoner has been punished for perjury on contradictory statements made by him before the deputy magistrate of Serampore, on 9th May, 1856, and on the 11th June, idem, before the additional sessions judge of Hooghly; but the proof submitted to the court appears to have consisted of the prisoner's deposition on oath before the deputy magistrate of Serampore of the date aforesaid and a copy only of a deposition taken before the additional sessions judge on the 11th June, 1856. As the copy alluded to should not have been substituted for the original deposition signed by the prisoner, the informality in making use of it must vitiate the conviction held upon it, the Court therefore direct that the additional sessions judge be called upon to state, whether the deposition itself, or a copy of it, as appears to be the case, was produced before him at the trial. On receipt of the additional sessions judge's explanation, the Court will be prepared to pass orders on this appeal.

*In reply to the above resolution the following letter, No. 139, dated the 21st November, 1856, was submitted by the additional sessions judge.*

With reference to the Court's resolution in the case of Tincowree Dheng, appellant, No. 938, of the 5th instant, (received yesterday,) I have the honor to state that the prisoner's deposition itself was produced and attested before me; and that a copy only was attached to the record of the perjury case, necessarily as the proceedings in this court are taken (perhaps from an erroneous construction of Circular Order, 16th July, 1830, paragraphs 2 and 3) in a continuous form, and one sheet of paper thus contains the testimony of probably three or four witnesses, and it may be of the prosecutor also.

*On perusal of the above letter the following resolution, No. 998, dated 26th November, 1856, was recorded by the Court (present : Messrs. H. T. Raikes and J. H. Patton.)*

The additional sessions judge has now stated to the Court, that the prisoner's original deposition was produced and attested before him, and that the copy observed upon by the Court, was necessarily placed on the record, because the proceedings of his court are taken in a continuous form, and one sheet often contains the depositions of two or more witnesses.

The Court observe that this explanation is not satisfactory. On the trial for perjury, it was necessary to have on record the two original depositions made by the prisoner, which were in fact, the best evidence in proof of the offence, and these depositions require to be identified and authenticated as the depositions of the prisoner. The mohurrir, Ram Lall, who describes himself as the writer of the deposition given before the sessions, is represented at the foot of his evidence of the 23rd July at the sessions trial, as authenticating a written deposition placed on the foudjary record being the one sworn to by the prisoner on the 11th June last; whereas this foudjary record only contains the copy to which the court alluded in their former resolution, and it would therefore appear that this copy, and not the original deposition, had been spoken to by the witness.



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The grounds of appeal are that when examined by the sessions judge, the name of "*Chintamony, deceased*," was not mentioned, but only the word "*the deceased*" made use of; and the prisoner was asked if he had seen the "*deceased*" beaten, and be-

The Court do not understand why any copy was necessary, if the original was placed on record in the first instance; but from the additional sessions judge's proceeding of the 11th June, committing the prisoner for trial, it would appear that at that time the copy was substituted, and that no other paper has since been used in support of the charge.

The additional sessions judge is therefore requested to state why a copy was in the *first* instance, placed on the foudary record of the perjury case, if it was not intended to substitute it for the original at the trial; and why if the original was on the record at the trial, the mohurrir, Ram Lall, is represented as referring to the paper so placed with the foudary *nulhee* and not to the original deposition, if that was placed before him for the purpose of identification.

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*In reply to the above resolution the following letter, No. 145, dated the 6th December, 1856. was submitted by the additional sessions judge.*

I have the honor to forward the second explanation in the perjury case of Tincowree Dheng, as required by the Court's resolution No. 998, dated the 26th ultimo.

I cannot do more than repeat, that it was the *original* deposition that was identified and attested by the writer thereof, Ram Lall mohurrir, and not the copy. For the said Ram Lall, to have sworn to the copy written by a copyist in the office as the original deposition written by himself, would have been gratuitous perjury on his part (and gross carelessness on my part, if not worse) with the original close by him too on the table; but such was not and could not have been done. The words at the end of Ram Lall's deposition, viz., "I attest as written by me the deposition placed with the foudary record," were it may be, somewhat ambiguous as regards the words "with the foudary record," and liable perhaps to misconstruction, but easily accounted for and explained. The mohurrir, Ram Lall, is now dead; and the mohurrir, who recorded his deposition as an attesting witness, was some time ago degraded by me for inaccuracy in such matters.

When the judge in my office directs a commitment for perjury, he sends with the record to the magistrate a copy of the sessions deposition to make that record complete. As the magistrate takes no evidence when committing in such cases, there is no call for the original deposition before him.

The record then comes back with the copy attached to it and the prisoner committed. While trying the perjury case, the sessions judge keeps the perjury case under trial, i. e. the roedad or continuous proceedings thereof on one side his table, and the foudary record on the other where the witnesses stand and give their evidence. Alongside this foudary record is placed *pro hac vice* the original sessions depositions requiring attestation, which once attested are again removed, and the foudary *nulhee* without them returned to the magistrate with the copy as at first. Such has been the custom from the first in my office, and I can see nothing in it requiring alteration.

The proceedings in my court are, as I said in my previous letter, taken in a continuous form under the Circular Order of 16th July, 1830; and thus when complete, form as it were a book or pamphlet. It may be that

ing an ignorant rustic and thinking the word applied to the prosecutrix, he said he had not seen her beaten; but that on finding out his mistake, he immediately stated that he had seen Chintamony beaten. The plea is inadmissible; for the prisoner in his examination before the sessions judge distinctly states that on hearing the noise he ran to the house and found Chintamony lying wounded, but he did not see the defendants then, for they had run away before he arrived. The appeal is rejected.

With regard to the explanation submitted in the additional session judge's letter of 6th December, 1856, No. 145, the Court consider that the original deposition of the party charged with perjury, whether the sheet contains only the examination of the party charged with perjury, or that of other witnesses also, should form part of and be attached to the proceedings on the trial for perjury, attested copies of the examinations being substituted in the original record.

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Case of  
TINCOWREE  
DHENG.

PRESENT :

G. LOCH, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

NUNDOO ROY (No. 1.) AND CHOONEE ROY (No. 2.)

CRIME CHARGED.—No. 1, perjury in having on the 13th February, 1856 intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the assistant magistrate of Deoghur, that Karoo Dehree, the defendant, murdered Nundoo Roy by blows of a *phursa* in Mouzah Bansa-beriah, and in having on the 7th May, 1856, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the officiating sessions judge of Bhaugulpore, that he *did not see Karoo Dehree, prisoner*, and on a question being put, that in the foudjary court you have, under a solemn declaration stated that *Karoo Dehree murdered Nundoo Roy, deceased, with a phursa*, how is it that you should deny here? he replied, that I never said so in the foudjary, and after hearing his foudjary deposition, said he *had not said that Karoo Dehree had killed Nundoo Roy*, such statements being contradictory of each other on a point material to the issue of

Bhaugulpore.

1857.

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Case of  
NUNDOO ROY  
and another.

Appeal re-  
jected; perjury  
being fully  
proved.

the original case in which the perjury was committed is appealed, and that in one sheet of the proceedings are the depositions of two or three witnesses, who all commit perjury. It would here be impossible, as well as inconvenient to attach to each case the original deposition.

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Case of  
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and others.

the case. No. 2 perjury, in having on the 13th February 1856, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the assistant magistrate of Deoghur, that *Pear Singh of Rungabad murdered Nundoo Roy in the village with a phursa, I saw this with my own eyes from the distance of 20 haths*, and in having on the 7th May 1856, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the sessions judge of Bhagulpore, on a question being put, Did the prisoner present *Karoo Dehree*, murder Nundoo Roy, deceased, in your presence, after looking at the prisoner answered, Yes, this individual *struck Nundoo Roy with a phursa on the neck. I saw with my eyes and Nundoo Roy died instantly*; and when again asked, that in the foudary court you have on the 13th February, 1856 deposed that *Pear Singh murdered Nundoo Roy with a phursa in the village of Usna*, and you saw it at a distance of 20 haths, and here you have stated, that *Karoo Dehree killed Nundoo Roy*, what is the reason of this? deposed, that it was true, that *Pear Singh had murdered Nundoo Roy*, and that *the statement made in the sessions, that Karoo Dehree murdered Nundoo Roy, was untrue*, such statement being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. A. E. Russell, magistrate of Bhagulpore.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhagulpore, on the 4th November, 1856.

*Remarks by the officiating sessions judge.*—This case was tried at Bhagulpore on the 24th September and 4th November 1856, with the aid of a jury.\*

\* Heeralol.  
Gorachand Ghose.  
Bhorosee Thakoor.

† Heeralol.  
Gorachand Ghose.  
Ramlal.

Owing to the absence of one of the jury, who sat on the first day's trial, another jury† was selected when the trial commenced.

The prisoners pleaded *not guilty*.

The circumstances of this case will be found in the reports of acquittal for the month of May, 1856 No. 3, when the prisoners gave contradictory evidence before this court and the assistant magistrate of Deoghur, on a point material to the issue of the case, and were committed for trial on a charge of perjury by order of this court.

Witness, No. 1, mohurrir attached to the assistant magistrate's office, wrote their deposition and administered the oath to the prisoners, and swears to its correctness. Witnesses Nos 2, 3, 4 and 5, absent, attested the evidence given before the sessions court, and witness No. 9, Moonshee, administered the

oath to them, while the sheristadar wrote their depositions. The prisoners merely plead *not guilty*, they cite witnesses Nos. 6, 7 and 8, to their good character.

The jury return a verdict of guilty, in which I concurred, and sentenced them accordingly.

*Sentence passed by the lower court.*—Each to three years' imprisonment with labor and irons.

*Remarks by the Nazamut Adawlut.*—(Present: Mr. G. Loch.) The prisoners appeal on the record, and plead that they are *not guilty* of the charge. The record shews that the prisoners have contradicted themselves on a very material point, viz. as to the person who killed Nundoo Singh. Choony Roy, prisoner No. 2 deposed before the magistrate that he saw Nundoo Singh killed by Pear Singh with a blow of an axe; and before the sessions judge when Karoo Dehree was on his trial for murder and other charges, the prisoner, then a witness, after looking at him said, Yes the prisoner (Karoo Dehree) struck Nundo Singh in the neck with an axe. I saw it, and Nundo expired immediately. On being reminded that before the magistrate he had stated that Pear Singh had killed Nundo, the witness immediately admitted that statement to be correct, and his present deposition charging Karee Dehree as the murderer to be false. The prisoner Nundo Roy, No. 1, deposed before the magistrate that he saw Karoo Dehree kill Nundo Singh, but before the sessions judge he declared that he had not seen Karoo Dehree at all: and on being reminded of what he had said before the magistrate, the prisoner, then a witness, repudiated that deposition altogether. The Court confirms the order of the sessions judge, and rejects the appeal.

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Case of  
NUNDoo ROY  
and others.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT

*versus*

Assam. KRISTO DASS ALIAS BILLEA GHUR GEEREE.

1857. CRIME CHARGED.—Wilful murder of Khohooah, a boy aged seven or eight years.

March 26. Committing Officer.—Capt. C. Holroyed, magistrate of Seeb-sagur.

Case of KRISTO DASS Tried before Major H. Vetch, deputy commissioner of Assam, *alias* BILLEA on the 12th December, 1856.GHUR GEEREE. *Remarks by the deputy commissioner.*—The case was tried before Capt. Holroyed, magistrate of Seeb-sagur with the assistance of a jury, and referred to the Court in the manner prescribed in Clause 5, Section 2, of the rules for the administration of justice in Assam. His letter No. 1, dated 24th September last, is submitted in original.

Prisoner sentenced capital-ly; his being of unsound mind when he committed the crime not being proved.

It appears that Musst. Alohee, the widow mother of the deceased, as well as the prisoner and Musst. Teepai, the former slaves of Gungaram Mouzadar, all reside on his premises, and that, during the absence of the first, for a few days, deceased slept in the house of Musst. Teepai, along with her own son, Manoo; it further appears that the prisoner some ten or twelve years ago, and without any assignable reason attempted to murder his wife, Musst. Noamolee.

On the day of the murder, he bathed, had his opium, and then called at the house of Musst. Sayanie and asked for betel-nut, but did not get it, he thence went to that of Musst. Teepai and asked for it there, but was told there was none, after which she went away to bathe; leaving the deceased asleep on his bedding inside. Shortly after this, her son Manoo, came home and saw the prisoner at the door with his face and clothes smeared with blood and a bloody *daw* in his hand, inside, and within five cubits off where he stood, lay the deceased quite dead, and believing he had been murdered by the prisoner, called out for his mother and the alarm being given, the prisoner ran off into the jungles.

The prisoner pleads to having committed the murder, qualified by alleging that he was out of his senses at the time.

Before the police he confessed that he went to Teepai's house to ask for *paun* and betel-nut, she then took a basket and went out, whilst he entered the house and sat down by the fire-place, near which lay the deceased asleep; he, prisoner, thereon with the *daw* he had in his hand inflicted two cuts on the neck of

the deceased and killed him, he then went out taking with him the *daw*, and on hearing the alarm given by Manoo and Musst. Teepai, fled into the jungle, he was pursued by the villagers Mohoram, Koleeram and Chunder, when overtaken by them, for fear of being beaten with their *latees*, threatened them with his *daw*, but on the arrival of his master, he threw it down and allowed himself to be apprehended, he says that when sitting by the bed he was seized with the desire to kill deceased, but has no ill-will against him; besides ten or twelve years before he was seized with a similar desire to kill his wife and wounded her.

Before the magistrate, he made a similar confession with this difference, his mind being troubled at being denied the betel, he lost control over himself.

The witness, Manoo, deposed seeing the prisoner at the door, with his face, hands and clothes smeared with blood and the bloody *daw* in his hand, within five cubits of the dead body of the deceased; on giving the alarm by calling his mother, the prisoner fled to the jungles. There was no ill-will between the lad or his mother and the prisoner, who is an opium-eater to the extent in weight of 1-16 of a rupee a day.

Musst. Teepai, deposed to the prisoner coming to her house and having asked for *tamal*, that she had none to give, she went out to bathe and on hearing her son call, returned and saw the prisoner running away, found the deceased lying dead with the throat cut; had heard that the prisoner at one time used to dance and frighten children and that he had on one occasion wounded his wife; that he has since been well behaved, he is an opium-eater.

Musst. Soyonce deposed that the prisoner came to her house on the day in question and asked for *tamal*, he was then in good temper, a little after this heard Manoo's cries and saw the prisoner running off.

Gungaram deposes that he heard Manoo's cries, went to the spot, and saw the dead body of the deceased, then went in pursuit of prisoner with some others, and overtook him about seven hundred yards from the spot; he would not at first allow himself to be taken, and raised his *daw* in a threatening attitude, but when promised, on oath, that he would not be ill-treated, he threw it away and allowed himself to be apprehended; he confessed to the deed, and when taken, his clothes, *daw*, neck and hands were smeared with blood; ten or twelve years before he, in a state of insanity, wounded his wife, since then he has been in sound mind, he is an opium-eater, takes it twice a day, and to the extent of the  $\frac{1}{16}$  of a rupee in weight.

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Koleeram.

Koleeram deposes to the same purport.

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Sopoka as above, says that

the prisoner was called mad, because he had wounded his wife, but he was of good disposition,

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Sopoka.

eats opium.

Moheram.

Moheram, as above.

Sarootce.

Sarotee, as above, has known the prisoner for eight or ten years, that his disposition was good, and that he is an opium-eater.

Horimun.

Horimun Mouzadar deposes to the confession before the police

and *sooruthal*.

Rutteeram ditto ditto.

Dr. Wallis.

Dr. Wallis deposed that the corpse of the deceased a boy of eight years, was brought to him

to be examined as having been murdered by a man considered to be labouring under insanity; the child he found had been killed by a sharp instrument, said to be a common Assamese *daw*, with which the head was almost severed from the body, with four cuts, one of which extended from the lobe of the left ear to the chin, laid bare the side of the lower jaw and cut through all the great vessels of the left side of the neck together with the trachea and œsophagus, and must have instantly destroyed the child's life, describes also the other cuts.

Deposes further to having paid particular attention to the state of the prisoner's mind since he came under his care, visiting him three times a week (at no stated hours) without tracing any symptom of insanity; that he was always morose and sullen, seldom spoke, that he always sat for hours without changing his position, that he cooked his own meals, and otherwise conducted himself like a sane man.

Considers from the phrenological development of the prisoner and his uniform morose and sullen conduct, combined with the long continued use of opium, that he would be easily excited to frenzy, at which time he considers the prisoner would be a dangerous lunatic and unaccountable for his own actions.

Monee Duftry, Powal Teckla, witnesses.

Prove the confessions before the foudjary.

Musst. Alahee, witness.

Musst. Alahee was absent when the murder took place and cannot tell why the prisoner killed his son; does not know of the prisoner's disposition as other than good, he is an opium-eater.

Musst. Noomolee.

Musst. Noomolee, that before

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the murder the prisoner had bathed and had had his opium, and got his "*suparree*" from her, and went in the direction of the house where the deceased was.

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*Defence.*—The prisoner pleaded that he killed the deceased whilst labouring under insanity.

*Verdict of the jury.*—The jury convicted the prisoner of culpable homicide.

*Opinion of Magistrate.*—In this verdict the magistrate did not concur, as he considered that prisoner had committed the act fully with the determination of killing the deceased, therefore finds him guilty of murder, at the same time adds, a doubt exists of the state of the prisoner's mind, at the time of committing the act, as from the unaccountable mode in which he murdered an unoffending child lying asleep, as also his savage attack on his own wife, some ten or twelve years previous, without cause or provocation, he is impressed with the conviction that the prisoner cannot be of sound mind, he therefore recommends, in place of a capital sentence, that he be confined for life in the Allipore jail with labor and irons, that in the event of future traits of insanity, he may be removed to the insane hospital.

*Opinion of deputy commissioner.*—The circumstances of the prisoner having been seen at the house prior to the deed and, after it, near the door within a few feet of the bloody corpse of the lad, with his person and clothes smeared with blood, the bloody *daw* in his hand, his flight and capture red-handed, and his oft-repeated confessions admit of no doubt of his having committed the murder, and the only question that rises is, in the absence of any ostensible motive for the atrocious and blood-thirsty murder of a helpless and sleeping child, could he have been in sound mind at the time? It has been clearly proved by the evidence of his neighbours, that, both before and after the deed, he was to all appearances of sound mind, although it is also shown by the evidence that some eleven years ago he made a similar onslaught on his wife but failed to effect his purpose of murder, and that he was greatly addicted to opium. The medical officer, who saw him frequently when in prison, could trace no symptom of insanity, but describes him as of the most morose and sullen disposition, and also a great opium eater, he considers from the phrenological development of the prisoner and his uniform morose and sullen conduct, combined with the long continued use of opium, that he would be easily excited to fits of frenzy, at which time he would consider him as a dangerous character and unaccountable for his actions. It appears from the depositions of Musst. Noomolee that prisoner had taken opium a very short time before the deed, it is possible



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that a state of mind, such as described by the medical officer, may have been induced by the abrupt departure of the witness Musst. Teepai, without giving him *tamul*, or from the cause hinted at by her in her deposition before the police, but which she has since denied, in either case, I do not think that he can be held as not accountable for his actions, I therefore convict him of the wilful murder of Khohooah, with such a conviction, I must propose capital punishment. At the same time as a doubt may exist as to the prisoner's accountability of mind, I would beg the consideration of the Court to the more lenient punishment recommended by Captain Holroyed.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The only question left for us to decide is, whether the prisoner's state of mind at the time he committed the deed was of that unsound nature that he was incapable of knowing that he was doing an act prohibited by law, so as to be excused in law for such act.

The one point in the civil surgeon's deposition, (which is given in full in the deputy commissioner's letter) is that under a certain combination of circumstances the prisoner might be excited to frenzy, which would make him a dangerous lunatic, and unaccountable for his acts. But there is no evidence, whatever, to shew that prisoner was under such frenzy, when he committed this murder; indeed the whole purport of the evidence of those who had seen him shortly before, including those with whom he lived, was, that he was on that day, and had been many years continuously of sound mind, in the sense before stated, as that in which the question of prisoner's responsibility has to be considered. Most of the witnesses state that the prisoner some ten or twelve years back wounded and hacked his wife, without any motive, under a sudden impulse: and two (Mohoram and Teepai) state that he for some time after, about a year, used to move about as mad, (*puglanee*) and threaten children. Prisoner himself states that he acted under a morbid impulse to kill. We cannot admit that such a fact, or any thing that has been above stated from the evidence, should bar a capital punishment, nor is the entire absence of motive any such bar. (Vide Nizamut Adawlut Reports Vol. I. page 82, Vol. I. 100, V. 2, part 2, 1852, page 945, Vol. V. part 1, page 246.) We therefore sentence the prisoner capitally.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND AMEER DEWAN

*versus*

MAHOMED ALIM (No. 10,) JOMEEMAT SHEIKH (No. 11,) GORIB MUNDUL (No. 12,) TORAB SHEIKH (No. 13,) KASIM SHEIKH (No. 14,) GOTEK KOTAL (No. 15,) GORIB SHEIKH (No. 16,) HASRUTH SHEIKH (No. 17,) EDOO SHEIKH (No. 18,) TEEN-COWREE SHEIKH (No. 19,) TOKEE SHEIKH (No. 20,) AND SUHBUTH SHEIKH (No. 21.)

Moorsheda-  
bad.

CRIME CHARGED.—1st count, wilful murder of Annardee Dewan, brother of the prosecutor; 2nd count, riot attended with the wilful murder of the said Annardee Dewan.

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Committing Officer.—Mr. W. C. Spencer, officiating magistrate of Moorshedabad.

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Tried before Mr. A. Pigou, officiating sessions judge of Moorshedabad, on the 8th January, 1857.

Case of  
MAHOMED  
ALIM  
and others.

*Remarks by the officiating sessions judge.*—The particulars of this case are as follows, and it is referred in consequence of a difference of opinion between me and the law officer.

One prisoner acquitted. Other prisoners convicted, on the evidence for the prosecution, and in default of proof of the *alibis* pleaded.

On the 18th September last, the prosecutor gave a petition, bearing the names of himself and Annardee, to the darogah, begging him to prevent a breach of the peace on their wishing to cut the crops on their own *piran* land; on the 19th idem, the darogah ordered a burkundaz, witness No. 24, Amcer Sheikh to proceed to the village and prevent any disturbance; some time after doing this, witness No. 1, Chand Sheikh, appeared at the thannah and deposed that that day, while his father, the prosecutor, and his uncle, Annardee, were engaged in cutting the crops, a number of men had come up and struck the prosecutor and wounded Annardee dangerously; the darogah sent the mohurrir to investigate, and the mohurrir going to the spot, took the deposition of Annardee, made a *sooruthal* of the wound, and returned to the darogah, the darogah's report reaching the magistrate, he directed, on the 22nd idem, an enquiry to be made; the darogah went to the village on the 29th idem, commenced the enquiry, and in process of time sent in the above prisoners.

The conduct of the darogah and mohurrir was very bad in the whole of their proceedings, but the darogah being dead and the mohurrir having been punished, it is not necessary to enter into an account of their neglect.

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On the mohurrir's going to the village on the 19th idem, he reported that Annardee refused to be sent to the hospital, but the darogah on the 29th idem, found the wound to have become so much worse, that with Annardee's consent, he sent him into the station, and on his reaching it on the 1st October, his deposition was taken by the officiating magistrate, and he was sent to the hospital, where he lingered one month, and died on the 1st November.

The depositions made by Annardee, viz. on the 19th October, before the mohurrir, the 29th idem before the darogah and the 1st October before the magistrate, cannot be received by this court as *dying* declarations, as they were not given by Annardee in *articulo mortis*; but the first two are proved to have been given on solemn affirmation by the testimony of witness No. 15, Lall Sheikh, and the latter is proved to have been given on solemn affirmation by the testimony of the witnesses Nos. 25, 26 and 27, viz. Nymoddeen, Ahmud Alee and Lall Beharee, and therefore can be received here as concurrent evidence.

In his deposition of the 19th idem, he declared that prisoners Nos. 10, 11 and 15, viz. Mohamed Alim, Jomeeat Sheikh and Gotee Kotal had ordered the assault, that, No. 21, prisoner Suhbuth, had struck him on the head with a *lattee*, and prisoner No. 13, Torab had struck him on his leg with a *lattee*, and that all the rest (except No. 18, Edoo Sheikh, whom he did not name) and some not yet apprehended, had been present aiding and abetting.

In his other depositions he mentioned the same facts with the addition that No. 12, Gorib Mundul, had also ordered it, that No. 14, Kasim had also struck him on the head with a *lattee*, and that No. 18, Edoo Sheikh was present.

The persons present with Annardee, on that land at the time of the riot, were the prosecutor Ameer, witness No. 1, Chand Sheikh (Ameer's son), his own son, witness No. 3, Joheer Sheikh, and his relative witness No. 2, Boshceer Sheikh; these all depose that Nos. 10, 11, 12 and 15, ordered, Nos. 14 and 21 struck Annardee on the head, No. 13 struck him on the leg, and Nos. 16, 17, 18, 19 and 20 were present.

The witnesses\* Nos. 6, 7, 8, 9, 10, 11, 12 and 13 depose more or less to the same facts.

No. 6, Amdoo.

„ 7, Hirasut.

„ 8, Mohabut.

„ 9, Sobardee.

„ 10, Tubroo.

„ 11, Kazim Sheikh.

„ 12, Rohnoo.

„ 13, Goodur.

The civil surgeon in his deposition declares that Annardee's death was occasioned by diarrhoea, brought on by general irritation of the system caused by the wound on the leg, which wound was made by a blow or

blows from a heavy bludgeon. He described the wound as being a compound fracture of the leg, and that it mortified by

want of attention and neglect occasioned by its not having been immediately attended to; that it was of a very severe nature, but not *necessarily* mortal, as amputation might have saved his life.

The law officer in his *futwa* declares, that he cannot believe that the witnesses in the confession of the riot, could have discerned who had actually struck the blow, and therefore, although he attributes the death of Annardee to the beating he received, and which amounts to culpable homicide, he cannot convict the prisoners of riot with culpable homicide, but convicts prisoners Nos. 10, 11, 12 and 15, of having ordered, and the rest of the prisoners of having committed riot attended with the beating of Annardee, and declares them all liable to *tazeer*.

With this verdict I cannot concur, and its reasoning I consider most fallacious; the law officer acknowledges the offence to amount to culpable homicide, and yet because he cannot believe the statement of the witnesses as to the strokes of the blow, he declares he cannot convict the prisoners of culpable homicide, although he considers them guilty of the beating which caused his death. Now, if the prisoners are guilty of the beating which caused death, and that death amounts to culpable homicide, they are guilty of culpable homicide, and the Mahomedan law considers all parties present as equally guilty, and each individual as if he alone had committed the act; and although the punishment due to all is not the same, yet all are equally guilty of the death, I cannot therefore understand on what principle he would acquit the prisoners of culpable homicide in this case.

I am of opinion that it is proved, that Nos. 10, 11 and 15, ordered the riot and assault, and that No. 21 struck the deceased on the head, and No. 13 on the leg, that the death was caused by that blow on the leg, and that Nos. 12, 14, 15, 16, 17, 19 and 20 were present, and concerned in the outrage, and therefore convicting them of riot attended with the culpable homicide of Annardee Dewan, I recommend a sentence of (7) seven years' imprisonment with hard labor in irons on prisoners No. 10, Mahomed Alim, No. 11, Jomeeat Sheikh, No. 13, Torab Sheikh, No. 15, Gotee Kotal and No. 21, Suhbut Sheikh as those most active in the outrage, and of imprisonment for (5) five years with hard labor in irons on prisoners No. 12, Gorib Mundul, No. 14, Kasim Sheikh, No. 16, Gorib Sheikh, No. 17, Husruth Sheikh, No. 19, Teen Cowree Sheikh and No. 20, Tokee Sheikh.

I acquit No. 18, Edoos Sheikh, and recommend his release, as he was not named by witness No. 1, Chand Sheikh, in his deposition at the thannah on the 19th idem, or by the deceased in his deposition before the mohurrir the same day, a few hours after the assault.

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The Court will observe that my opinion has been guided regarding the relative parts taken by the prisoners in the assault, by the deposition of the deceased before the mohurrir.

I give my opinion in this case with great diffidence, as the principal evidence is, the testimony of the prosecutor and witnesses Nos. 1, 2 and 3 who are all relatives of, and some of the others are connected with, the deceased, and in the case of Government *versus* Bhowance Roy and another tried by me on the 29th July last, and which was the first case I had tried as sessions judge, the Court's remarks were very severe regarding the credibility given by me to the evidence for the prosecution, that evidence having been given by servants and ryots of the zemindar whose dependant had met with his death, but I submit that in this case the above prosecutor and witnesses Nos. 1, 2 and 3, were the only parties present with the deceased, and that the deceased in his deposition named the prisoners as stated above, and that therefore the evidence, although they are near relatives of the deceased is worthy of all credit. The prisoners were all defended by an experienced vakeel of this court, and he has urgently pressed the superior court's remarks in the above case of Bhowance to my notice, but for the reasons above stated I am constrained to give all credence to the evidence of the witnesses for the prosecution, and I may remark that the defence of the prisoners, who all pleaded *not guilty*, totally failed to be proved.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The case has been referred to this Court, owing to a difference of opinion between the sessions judge and law officer, as to the nature of the offence of which the prisoners are guilty. The sessions judge considers the prisoners, with the exception of No. 18, Edoo Sheikh, whom he acquits, guilty of riot attended with culpable homicide. The law officer, of riot and assault and battery. It is clearly proved by the evidence of the Civil Surgeon that deceased died from the effects of the beating he had received; and it is proved that beating was from the prisoners: and as the plea of *alibi* advanced by the defendants has in no way been substantiated, we concur in the finding of the sessions judge, convicting the prisoners of riot, attended with culpable homicide; and we sentence the prisoner Mohamed Alim No. 10, Torab Sheikh No. 13, and Gotee Kotal No. 15, as the leaders and worst offenders, each to seven years' imprisonment with labor and irons, and the other prisoners each to five years' imprisonment with labor and irons. We acquit the prisoner Edoo Sheikh No. 18, and direct that he be immediately released.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

SEEBA SINGH (No. 10,) DURSHUN SINGH (No. 11,) BULLOO SINGH (No. 12,) GOORSURN SINGH (No. 13,) POKHUN SINGH (No. 14,) RADHEY SINGH (No. 15,) KIRTEESINGH (No. 16,) AND GHUNSHAM SINGH (No. 17.)

Patna.

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CRIME CHARGED.—Affray attended with severe wounding.

CRIME ESTABLISHED.—Same as crime charged.

Case of  
SEEBA SINGH  
and another.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Prisoners

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 22nd November, 1856.

convicted;  
pleas in ap-  
peal being re-  
jected. Re-  
marks on neg-  
lect of Circular  
Order 16th  
June 1843.  
No. 138, and  
on statement  
of the case by  
the Counsel  
here.

*Remarks by the sessions judge.*—In a quarrel relative to some paddy grown for transplantation, a collision took place between the parties represented by the prisoners who are all sworn to by witnesses from 1 to 5, as having been concerned in the affray, the wounds received by two of the prisoners, Seeba Singh on one part, and Kirtee Singh on the other, are both of about the same nature, sword-cuts on the outside of the thigh, Kirtee's being the most severe; neither of them, however, is of a very grave description. The defence of the majority of the prisoners is rather criminatory than otherwise, as admitting the main facts of the affray. The evidence produced by the prisoners is also in a great measure confirmatory of their participation in the affray.

The law officer brings in a verdict of guilty against all the prisoners, in which I concur.

The presence and participation of all the prisoners in the affray is fully proved, the ground and motive of the quarrel is also fully apparent, there is no doubt but that the affray, as described by the majority of the witnesses for the prosecution, took place, and two of the party are shown to have been suffering immediately afterwards from severe wounds; there is no direct evidence as to who wounded Kirtee Singh, but that Ghunsham wounded Seeba is fully established by witnesses Nos 1, 2 and 3. Witnesses Nos. 9 and 11, for the defence depose to having seen Seeba Singh being purposely wounded with a razor so as to simulate a sword cut, but I quite agree with the magistrate in rejecting this evidence as altogether at variance with the known fact of the case. I convict the prisoners, Nos. 10 to 17, inclusive, of affray attended with severe wounding and with reference

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Case of  
SEEBHA SINGH  
and others.

to the evident premeditation on both sides sentence Seeba Singh, Dursun Singh, Bulloo Singh, Goorsurn Singh, Pokhun Singh, Radhey Singh, Kirtee Singh and Ghunsham Singh, each and all to five years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) There are two appeals in this case;—the one on the part of prisoners, Nos. 10, 11, 12 and 13, who were one party in the mutual affray;—the other on the part of prisoners Nos. 14, 15, 16 and 17, who were the other. The prisoners Nos. 10, 11, 12 and 13, are not represented by counsel; and they appeal on the record. We have carefully perused the whole of that record; and see no reason to interfere with the conviction or sentences in regard to them.

The prisoners, Nos. 14, 15, 16 and 17, were defended by Moonsee Ameer Alli, Moulvee Aftabooddeen, and Moulvee Murhummut Hossein. The two latter, however, conducted the case. The pleas urged by Moulvee Aftabooddeen, may be divided into two classes; firstly, those which rested on facts asserted by him to be stated on the record, but which were *not* so stated on the record; and secondly, those which were on the record. Of the first class, this pleader's first plea was that one witness before the magistrate stated that the occurrence took place eight or ten *years* ago, and before the sessions judge two or three *months* ago. But the record shews that the witness did *not* say years, but *days*, and that his evidence is quite consistent. Again this pleader urged that witnesses Nos. 4 and 5, for the prosecution stated, both before the magistrate and sessions judge, that they did *not see* prisoner No. 17. The record shews that each did say that he *did see* him, except No. 4, to the magistrate, who speaks only of "others." Further this pleader urged that the medical testimony was that the wound of prisoner, No. 10, was "*sakta*," i. e. made for the occasion; and that the same evidence shewed the charge of *severe* wounding was incorrect; as the civil surgeon stated there was no severe wounding. The civil surgeon deposed that as the wound of prisoner, No. 10, was slight, it might, perhaps have been inflicted by himself; and that the wound of prisoner, No. 16, was "*severe*," and that therefore he did *not* think it was self-inflicted. The second class of pleas is that witness No. 1, did not mention prisoner, No. 17, at the thannah; that witness, No. 2, says to the magistrate, that he saw prisoner No. 17, strike prisoner No. 10; yet before the sessions judge he stated that he fled on the affray taking place; that witness No. 3, also stated at the police that prisoner, No. 16, was there; and others; that to the magistrate, he says prisoner, No. 17, struck No. 10, and in the sessions that he did not see prisoners, Nos. 14, 15 and 16.

It is further urged by Moulvee Murhummut Hossein, that the

record would shew that the prisoners Nos. 14, 15, 16 and 17, were the aggrieved parties, and that the severe wound of prisoner No. 16, and the slight wound of prisoner, No. 10, support this view.

We have carefully considered the whole record, and deem the conviction and sentences proper. It is true that the police records shew the witness No. 2, not to have mentioned prisoner No. 17; but it is equally clear that some witnesses state they did mention him at the thannah, and that they suppose it was not recorded. Be that as it may, a police deposition is certainly not the most trustworthy generally; and in this case they have been taken *in extenso*, contrary to the Circular Order No. 138, 16th June, 1843. The other plea is not quite accurate. Witness No. 2, states at the sessions that he saw the beginning of the affray, and *then* fled. The plea as to the "*sakta*" wound is disproved by the witnesses called for the defence; one of whom, prisoner No. 10, says that Sukoor made it; another that the barber made it. Nor is the *alibi* deposed to (at a *coss* distance) sufficient to overweigh the clear evidence of the participation of both sides in the offence charged. We reject the appeal. The attention of the magistrate and sessions judge is requested to the disregard of Circular Order No. 138, dated 16th June, evident on the police records in this case. The Court observe that the excuse of Moulvee Aftabooddeen in regard to having stated that to be on the record which was not, viz. that he trusted to his mohurrir's abstract, and that as the Court would read the papers they could correct his mis-statements, is inadmissible; and is not a view of his duties compatible with their proper performance, as regards either his clients or this Court.

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Case of  
SEEBHA SINGH  
and others.



## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND NEEDHAN GARROW

*versus*

MYE GARROW.

Assam.

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Case of  
 MYE GARROW.

CRIME CHARGED.—Murder of Neelack.

Committing Officer.—Captain E. A. Rowlatt, magistrate of  
 Kamroop.

Tried before Major H. Vetch, deputy commissioner of Assam,  
 on the 8th December, 1856.

*Remarks by the deputy commissioner.*—It appears from the deposition of Musst. Needhan, that she and her husband, the deceased, were returning home from their field which is at considerable distance from the village and when within about 160 yards of it, they were joined by the prisoner, who came out of the jungle and asked deceased for the loan of his spear to hunt a hog, on its being given into his, prisoner's hand, he at once thrust it into deceased's belly on the right side, he then gave a groan and said, Why do you kill me? grasped the spear and with the aid of the prisoner, pulled it out; seeing this, she called to Kattee Booksing and Mano, for help and to come quickly; they did so, and secured the prisoner, who confessed to the deed, the deceased at the same time was carried to his home on a litter and expired that evening, she adds that the spear had entered about eight fingers in depth, and when withdrawn was smeared with blood. The path on which all this occurred was only about a cubit wide, with jungle on both sides; there was no ill-will between the deceased and prisoner, who has been a resident in the village for a year and had never shown any symptoms of insanity, nor did he appear under the effects of liquor.

The prisoner pleaded guilty to the charge.

In his confession before the police he admitted that he had borrowed the spear from the deceased under pretext of killing a hog and then thrust it into his belly, and from the effects of which he died the same evening; that he prisoner was aware that the thrust would prove fatal.

Before the magistrate he also confessed to having intentionally killed the deceased by thrusting the spear into his belly, and that he did so in consequence of having been disappointed in his search for a wild hog, and falling in with the deceased got his spear on the pretext, as stated above.

*Witness for prosecution.*—Katte witness deposed that he

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Case of  
MYE GARROW.

heard Must. Needhan calling to him, Booksing and Mano, to come quickly as Mye Garrow (the prisoner) had speared her husband; all three ran to the spot, distant about 100 yards from the village, but in the hills, and there saw the deceased with a wound in his belly; over him stood the prisoner with a spear in hand, behind him the prosecutrix with an infant in her arms weeping; on questioning her, she said that the prisoner had come out of the jungle as she and the deceased were returning from field, prisoner said he was in quest of a hog and asked for the loan of the spear, which, having got, he thrust into the deceased's belly. On questioning prisoner, he confessed it was so; saw blood on the spear, showing it had entered about eight fingers, prisoner was then secured and taken to the village, where the deceased was carried home and placed on a *chang* and died that evening from the effects of the wound, the deceased had been in previous good health (his age 35 to 37 years;) the prisoner confessed but alleged no reason for the deed, nor had he taken liquor, he came to the village two years before, lived in a house 15 feet apart from witnesses; witness knows him to be sane and never saw any symptoms of his being deranged before, or on the day of the murder, nor does he know of any intrigue between the prisoner and the prosecutrix, or any cause of ill-will to the deceased. Prisoner before the police freely confessed to the deed; the spear belonged to the deceased.

Booksing witness deposed to the same purport, with this

Booksing.

difference that he was sent in company with the above to Sindoo Kooar to report and to convey the corpse to the house of one Kowarane, from whence it was sent with a litter to the police.

Mano.

Mano witness the same as the forgoing witness.

Kettoo Kooch Andallah Surah deposed to the *sooruthal* and to have observed on the right side of the belly a gash, three fingers in length and one in width, from which the intestines protruded. At that time the body was in a swollen state.

Sindoo deposes that he heard of the murder two days after it

Sindoo.

occurred and went to the house of the deceased, his relative;

there he saw the corpse and the wound; he questioned the prisoner, who confessed to having speared the deceased with the intention to kill him. And from the effects of which wound, deceased died.

Gungaram and Gobindram deposed to the confession made by the prisoner before the *foujdary*.  
Gungaram and Gobindram.

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*Defence.*—The prisoner in his defence stated that on the day in question, when watching his lac, he saw the deceased and his wife with an infant in her arms enter the place and steal about 10 seers; that he called out, Who is stealing my lac? on which the deceased ran off, leaving his spear, which he, prisoner, took up with the intent to spear the offender at all hazards, and threw it from a distance of 2 "*tars*" (24 feet) he heard a groan, and on coming up found Neeluck with the spear sticking in him, prisoner withdrew it and removed deceased from the jungle to the roadside, but at the time he threw the spear, he says, he did not know who at, and when he discovered he wept; says, the place where deceased was speared was distant 2 *tars* from the road, there deceased lost about a seer of blood and another whilst on the road; it was when standing over him that he was apprehended by Kattee; has no witnesses either to prove the stealing of the lac or the other parts of his story.

*Verdict of jury.*—The jury consider the crime of culpable homicide proved against the prisoner.

*Opinion of magistrate.*—The magistrate concurred in the verdict of the jury and recommends that the prisoner be sentenced to imprisonment in banishment for life.

*Opinion of deputy commissioner.*—The oft-repeated confessions of the prisoner, to having inflicted the spear-thrust, with the intent to kill the deceased, the deposition of the prosecutrix to having seen the prisoner thrust the spear into her husband's belly, corroborated by the evidence of three witnesses who were instantly attracted to the spot by her cries, where they saw and apprehended the prisoner with the bloody spear in his hand standing by the deceased, who expired from the effects of the wound that same day, afford conclusive proof of the prisoner's guilt; no reason was assigned by the prisoner for the commission of the deed until he, in his defence, alleged he had detected the deceased and his wife in the act of stealing lac, but in support of this he can cite no evidence. In either case he committed wilful murder, and I convict him accordingly, and, while for such a crime, I am constrained to propose that he suffer capital punishment, I am inclined to believe that the prisoner acted from some exciting cause, such as he has described, and taking into consideration that he belongs to a tribe of people almost in a savage state, I beg the consideration of the Court to the more lenient sentence of imprisonment for life in transportation, as recommended by the magistrate.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The guilt of the prisoner is fully proved by prisoner's confessions before the police, the magistrate, and at the sessions; and by the evidence of the prosecutrix and the witnesses for the prosecution. The deputy commissioner recommends the more lenient sentence of transporta-

tion for life on account of the prisoner belonging to a tribe almost in a savage state. Such a plea, however, was not allowed to have effect in the case of Rungbura Garrow, sentenced capitally by this Court at the recommendation of the deputy commissioner, on 10th February 1855, (Vide Nizamut Adawlut reports for 1855, volume 1, page 186) who was convicted of murder committed for the purpose of performing a supposed religious duty. We do not, in the present case, see any sufficient mitigating circumstances. We therefore, sentence the prisoner, Mye Garrow, to be hanged.

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Case of  
MYE GAR-  
ROW.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

KASSY MAHITEE.

Midnapore.

**CRIME CHARGED.**—1st count, dacoity in the house of Narayn Nund, inhabitant of Taighurry, Guheeree Barh, thannah Nimal; 2nd count, dacoity in the house of Hureechurn Sahoo, inhabitant of Deehee Kakrah, thannah Sagressur; 3rd count, dacoity in the houses of Doondeeram Chundee and Keerty Narain Chundee, inhabitants of Julladarhee, thannah Bamoonarah; 4th count, having belonged to gangs of dacoits.

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Case of  
KASSY  
MAHITEE.

Committing Officer.—Capt. C. H. Keighly, assistant general superintendent and joint-magistrate Midnapore.

Tried before Mr. Thomas C. Loch, sessions judge of Midnapore, on the 5th January, 1857.

*Remarks by the sessions judge.*—The prisoner pleads guilty without reservation to all the charges in which he is arraigned and states he does so with his own free-will. His confession before the assistant superintendent for the suppression of dacoity, he also states to have been given voluntarily and it is proved to have been so, by the two attesting witnesses.

Prisoner convicted and sentenced under Act XXIV. of 1843, on his own confessions corroborated by independent evidence.

Besides the dacoities on which he stands charged in the present trial, he has confessed to fifteen others.

Witness No. 1 identifies the prisoner and swears to his having been engaged in the dacoity in the houses of Doondeeram Chundee and Keertee Narain Chundee of Julladharee, thannah Bamoonarah (count 3.)

In corroboration of the prisoner's confession a final police

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\* Copy of Khutunin report, &c. No. 16, attempt at dacoity in the house of Narain Nund.

*Nuthee*—No. 263, dacoity in the house of Hurreechurn Sahoo.

*Nuthee*—No. 236, dacoity in the houses of Doondeeram Chundee and Keertee Narain Chundee.

† A copy the original has been mislaid in the magistrate's office.

report and two *nuthees* noted in the margin\* have been forwarded.

The police report,† numbered 16, states that only an attempt at dacoity was made in the house of Narain Nund, but the prisoner positively asserts that a dacoity actually did take place.

The *nuthee* numbered 263

shews that a dacoity took place in the house of Hurreechurn Sahoo on the night of 3rd January, 1845, and that suspicion fell on the defendant Kassy Mahitee, who was apprehended, but subsequently released for want of evidence.

From the *nuthee* numbered 236 it is shewn that a dacoity was committed in the house of Doondeeram Chundee and Kirtee Narain Chundee on 22nd May, 1855, and that both the defendant and Luku Jana (witness No. 1) were apprehended, but subsequently released from want of proof.

There is no doubt from the records that dacoities in counts 2 and 3 were committed, and I am also satisfied that the dacoity in count 1st also took place, although it was reported at the time only as an attempt. That the prisoner belonged to gangs of dacoits is clearly proved by his voluntary and unreserved confession, both before the assistant superintendent for suppression of dacoity and in this court, I therefore convict the prisoner of the dacoities with which he stands charged and with having belonged to a gang of dacoits and recommend that he be transported for life.

The prisoner having been committed with a view to his being made an approver, I took up the case at once agreeably to the orders addressed to the judge of Hooghly, No. 403, dated 20th April, 1853.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner was apprehended on 27th November, 1856, being implicated in the confession made by the witness (approver) No. 1, on 26th March, 1856. The prisoner confesses to having committed the dacoities with which he stands charged in the calendar, as well as eight others. His confession is corroborated by the evidence of witness No. 1, as regards counts 2 and 3; and he was from the first charged with committing the dacoity, entered in count 1, being recognised by the prosecutor at the time of its occurrence; but released in the mofussil from want of further evidence. We convict the prisoner on all the counts; and sentence him, as recommended by the sessions judge, to be transported for life.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

BHYRO MANJEE (No. 1,) LATTIAIE MANJEE (No. 2,) Chota Nag-  
AND GUNGOO MANJEE (No. 3.) pore.

CRIME CHARGED.—No. 1, 1st count, riot attended with the wilful murder of Poorun Singh Duffadar, and Ramchurn Pandey Sowar; 2nd count, illegally and riotously assembling with offensive weapons for the purpose of plunder or to commit a serious breach of the peace; No. 2, 1st count, being accomplice in the above-mentioned crimes with prisoner No. 1; 2nd count, having in his possession a ring, the property of Poorun Singh Duffadar, deceased, well-knowing it to have been acquired by the murder of the said Duffadar; No. 3 having in his possession a gun, the property of Ramchurn Pandey Sowar, deceased, well-knowing it to have been acquired by the murder of the said Sowar.

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Case of  
LATTIAIE  
MANJEE  
and others.

Sonthal case.  
Sentence modified under the circumstances of the case.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Burhee, sub-division in Hazareebaugh.

Tried before Capt. W. H. Oakes, deputy commissioner of Chota Nagpore, on the 3rd December, 1856.

*Remarks by the deputy commissioner.*—The prisoners plead *not guilty*.

From the evidence\* in this case, it appears that on the 29th April, 1856, information having been received that a

- \* No. 1, Shere Khan Sowar.
- „ 2, Peer Khan Sowar.
- „ 16, Nazur Alli, Duffadar.
- „ 17, Meer Mohafoos Alli, Sowar.

large body of armed Sonthals had assembled, and had been demanding rice and other articles of food, from the shopkeepers of the village of Chuttro Chuttee, Mr. Tweedie, deputy magistrate of Burhee, accompanied by Lieutenant Ryan and two duffadars and thirteen sowars of the Ramgurh irregular cavalry, immediately proceeded to the village, but finding that the Sonthals had departed, pursued them to a place called Muchlee Puhree. When the deputy magistrate's party came in sight of this body of Sonthals, consisting probably of about two or three hundred men armed with bows and arrows, swords and axes, the latter began to beat their drums and play their horns, preparing to fight. The deputy magistrate directed them to lay down their arms. Some of the Sonthals, among whom were the prisoners Bhyro No. 1, and Lattaie No. 2, complied with this order, but the greater portion

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LATTAE  
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refused to do so, and some of those, who had in the first instance laid them down, subsequently began to take them up again.

The deputy magistrate after having vainly endeavoured to persuade the Sonthals to give up their arms and finding that they would not consent to do so, commenced the attack by discharging a pistol at them, and ordered the Sowars to fire also. By this discharge of fire-arms one of the opposite party was killed and the Sonthals having also attacked the deputy magistrate's party with their bows and arrows, &c. Poorun Singh Duffadar and Ramchurn Pandey Sowar were killed on the spot, and the deputy magistrate and some of the Sowars and several of the horses were wounded. As the Sonthals were in such overpowering numbers, the troops with the deputy magistrate, were obliged to retreat. The following day the corpses of the Duffadar and Sowar covered with wounds from arrows, axes, &c. were brought in from the spot, where the skirmish had taken place, to Khurruckdea.

The jury\* find the prisoners guilty, in this finding I agree that the duffadar and sowar were killed by the Sonthals, congregated together at Muchlee Puhree, is proved beyond adoubt. It has not been ascertained from whose hands the duffadar met his death. With regard to Ramchurn Pandey sowar, witnesses Nos. 1 and 2 have most positively deposed, that after he had been shot through the body with an arrow, and had fallen from his horse to the ground that Bhyro prisoner No. 1, attacked him with an axe, and wounded him first on the arm and secondly on the shoulder. Witness No. 2 adds that the sowar died immediately after he had received the wounds from the hands of Bhyro, prisoner No. 1.

Nagur Ulli duffadar, No. 16, and Meer Mohafoos Ulli sowar No. 17, the other two eye-witnesses to the fact, have not identified Bhyro prisoner No. 1, as the person by whom the sowar was cut down. They state that when the sowar fell, a rush was made on him by several Sonthals, but they are not able to identify the parties who killed him. The evidence of witnesses Sher Khan sowar No. 1, and Peer Khan sowar No. 2, appears to be entitled to credit. Bhyro, prisoner No. 1, had been close to them for about an hour, while the deputy magistrate was trying to induce the Sonthals to lay down their arms, and they had therefore ample opportunity of becoming acquainted with his personal appearance, and when Ramchurn Pandey sowar fell to the ground, they were, but a few paces off and could easily see the person by whom he was then attacked. There is no evidence whatever, to show by whose hands Poorun

\* Heeralall Mooktar, Juggunall Mooktar.

Singh duffadar died, but as it is proved by the admission of Bhyro, prisoner No. 1, and Lattaie, prisoner No. 2, and by the evidence of witnesses Nos. 12, 16 and 17, that they were present with the armed body of Sontals, by whom the duffadar was killed, they must both be held responsible for the acts of their companions, with whom they were unlawfully assembled.

I accordingly find Bhyro prisoner No. 1, guilty of the first count of the charge against him and Lattaie, prisoner No. 2, of being an accomplice in the same. The second count against Lattaie prisoner No. 2, is fully established against him. The ring which has the name of the deceased duffadar engraved on it,

and has been identified by the witnesses\* for the prosecution, was found on the person of this

prisoner as admitted by him. The only defence made by him, is that he received it from his brother Goonee. Of this, however, he has given no proof. Having found these two prisoners guilty, and as they have also been convicted in two other cases, Koonjoo Moodee and others, prisoners, and Karoo Naik and others, prosecutors, on a charge of plundering, &c., the proceedings in which cases are herewith transmitted I beg to recommend that Bhyro prisoner No. 1, should be sentenced capitally and that Lattaie prisoner No. 2, who is a Soobah among the Sonthals, should be sentenced to imprisonment in transportation for life with hard labor in irons. Having found Gungoo, prisoner No. 3, guilty of the charge laid against him, by his own confession, before the deputy magistrate, and by the carbine having been found in his possession, as proved by the deposition of witness Bhuttun Burhee No.

15, and the weapon, however, having been identified,† as having belonged to the deceased, Ramchurn Pandey, sowar, I recommend that he be sentenced to five years' imprisonment with

hard labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Prisoner No. 1, Bhyro Manjee, has died since the trial was referred to this Court. The evidence for the prosecution, that of the sowars actually on the spot, clearly proves the first charge, i. e. being an accomplice in riotously assembling armed against the peace, in respect to the prisoner No. 2. But that same evidence equally shews that prisoner laid down his arms at the very first, on being called upon to do so; that he did not take them up again; that he was not seen, as others were, to join in the attack upon the sowars subsequently, that is when Mr. Tweedie, having had some abuse from Kaloo Manjee struck him, and fired his pistol at him, and

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ordered the sowars to fire, and the attack commenced in which two sowars were killed. Further, prisoner No. 2, is guilty of the second charge against him, i. e., having Poorun Singh's ring, knowing it to have been acquired by his murder. This prisoner has also been convicted of plundering in two cases. He is a Sonthal Soobah. The deputy commissioner recommends transportation for life beyond sea with hard labor and irons. After carefully considering the clear and apparently truthful evidence of the sowars, we think that there are mitigating circumstances in the conduct of this prisoner, in at once giving up his arms, in counselling others to do so, and in not being seen thereafter attacking the troops. Indeed the evidence shews that the attack might not have taken place, but for the unfortunate altercation with and pistoling of Kaloo Manjee. We think fourteen years' imprisonment with labor and irons sufficient punishment.

In regard to Gungoo prisoner No. 3, the charge against him is clearly proved. But as it is the only charge against him, we think that three years' imprisonment with labor and irons will be a sufficient punishment.

We sentence the prisoners accordingly.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

RUGHOO DOSS.

Midnapore.

1857.

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Case of  
RUGHOO  
DOSS.

Prisoner convicted and sentenced under Act XXIV. of 1843: on his own confessions corroborated by testimony of approver-witnesses.

CRIME CHARGED.—1st count, dacoity on 11th June, 1850, in the house of Sreemotee Durpodee Bewah, inhabitant of Neemkee Mahar, thannah Shubang; 2nd count, dacoity on 3rd July, 1850, in the house of Sreemutteah Tara Kusbee, inhabitant of Mahar, thannah Shubung; 3rd count, dacoity on 7th February, 1853, in the house of Beehoo Sattooah, inhabitant of Sindoornory, thannah Shubung; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and joint-magistrate of Midnapore.

Tried before Mr. T. C. Loch, sessions judge of Midnapore, on the 7th January, 1857.

*Remarks by the sessions judge.*—The prisoner pleads guilty to all the charges he is arraigned on, he says he does so of his own free-will. His confession before the assistant superinten-

dent for the suppression of dacoity, he also states to have been given voluntarily and which is proved by the evidence of the two attesting witnesses.

Besides the dacoities for which the defendant is tried in this calendar, he confesses to eight others.

Witness No. 1, identifies the prisoners and swears to his having been engaged in the dacoities that were committed in the house of Sreemutteah Tara Kusbee on the 3rd of July, 1850, (count 2nd) and Bechoo Sattooah on the 7th February, 1853, (count 3rd)

In corroboration of the defendant's confession the *nuthees* noted in the margin\* have been produced.

*Nuthee No. 410.*—Dacoity in the house of Sreemutteah Durpodee Bewah.

*Nuthee No. 399.*—Robbery in the house of Tara Kusbee.

*Nuthee No. 547.*—Dacoity in the house of Bechoo Sattooah.

From *nuthee* numbered 410, it appears that a dacoity was committed in the house of Sreemuttee Durpodee Bewah on the 11th June, 1850. The Bewah

stated she recognised the defendant (Rughoo) who was apprehended but subsequently released from want of evidence.

The dacoity charged in the 2nd count, having taken place in the house of Sreemutteah Tara Kusbee was reported, as will be seen by the *nuthee* No. 399, as only a burglary and treated as such during the subsequent investigation. Witness No. 1, and the defendant both positively state that in reality it was a dacoity, the former stating that *nussals* were lighted. I see no reason to doubt these men's statements as it can be of no advantage to them to exaggerate the offence and I shall therefore consider it as a dacoity.

From *nuthee* numbered 547, it is evident that a dacoity was committed in the house of Bechoo Sattooah, it also appears that the prisoner was apprehended, but subsequently released for want of evidence.

From the records, the confession of the prisoner, before the assistant superintendent for suppression of dacoity, and in this court, and the evidence of witness No. 1, it is clear that the prisoner is guilty of the three dacoities charged, it is also proved without doubt on his confessions, that he belonged to a gang of dacoits, I therefore convict him of the three dacoities with which he stands charged, and with having belonged to a gang of dacoits and recommend that he be transported for life.

The prisoner having been committed with a view to his being made an approver, I took up the case at once agreeably to the orders addressed to the judge of Hooghly, No. 403, dated 20th April, 1853.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner was apprehended on 29th October, 1856, being implicated by the confession of the

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approver-witness No. 1, made on 25th September, 1856. The prisoner confessed to having committed the dacoities with which he stands charged in the calendar, as well as fifteen others. His confession, as regards the dacoity entered in count 3 is corroborated by the deposition of the witness No. 1; and the Court see no cause to question the truth of the prisoner's confession, (which was voluntarily given before the assistant commissioner, and at the sessions trial,) as regards the other dacoities. The Court, therefore, convict the prisoner on all the charges; and sentence him, as recommended by the sessions judge, to be transported for life.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND KALEECHURN SINGH

*versus*

Patna.

BAHADOOR SINGH.

1857.

March 27.

Case of  
BAHADOOR  
SINGH.

CRIME CHARGED.—Wounding Kaleechurn, prosecutor, with intent to murder.

CRIME ESTABLISHED.—Wounding Kaleechurn with intent to murder.

Committing Officer.—Mr. F. A. Vincent, deputy magistrate of Barh.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 1st November, 1856.

Pleas in ap-  
peal rejected.  
Remarks as to  
defect, in re-  
gard to medi-  
cal testimony.

*Remarks by the sessions judge.*—Prisoner pleads *not guilty*.

Prosecutor is prisoner's nephew, there was an old standing dispute between them regarding some proprietary share, they lived in separate houses on the day in question, they were seen and heard disputing about some manure, after which prosecutor went down to a tank close by to bathe, prisoner entered his own house, came out again immediately with a drawn sword, followed prosecutor down into the tank, and, on his stooping to dip his head, struck him with the sword and repeated the blows wounding him severely in three places on the head, cutting off four fingers of the left hand put up to guard his neck, and the little finger of the right hand. The left hand was subsequently amputated to avert lockjaw. The occurrence took place at about three in the afternoon before witnesses Nos. 1, 2, 3 and 4; witnesses Nos. 6, 7 and 8, attest the severity of the wounds, the arm amputated above the wrist, the scars on the head, and the cut off finger are in themselves sufficient evidence of the extent of the injuries inflicted by the prisoner.

The prisoner in his defence denies having wounded Kaleechurn, pleading that he was ploughing his field on the day in question, and was there when they came and accused him of the crime, of which he was totally ignorant.

Four witnesses examined in support of prisoner's statement, depose to his having been in his field up to about 3 P. M. and to Beharee Rai peada on coming from the zemindary cutchery to fetch him thence. They say the field is about a quarter of a mile from prisoner's house.

The law officer gives in a verdict of guilty of the crime charged in the calendar in which I concur.

The crime is fully established, the defence utterly breaks down. The attack was probably made in hot blood under the excitement of a personal quarrel and hard words between himself and his nephew, it was, however, a cowardly and aggravated attack on an unarmed and defenceless man, and, had not timely assistance been at hand, murder would doubtless have ensued, as it is, permanent injury has been inflicted to a very great extent. I convict Bahadoor Singh of wounding Kaleechurn Singh with intent to murder him and sentence him to fourteen years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The grounds of appeal are; *firstly*, that the witnesses have colluded with the prosecutor, and that the very consistency of their evidence is suspicious; *secondly*, that were the charge true there would not have been the delay of two days in giving intimation to the thannah.

The charge is fully proved against the prisoner; and we can find no cause to distrust the credibility of the evidence. The delay in giving information was caused by the chowkeedar who was dispatched to the thannah being unable to procure a boat to cross the river. We reject the appeal. The native doctor should have been examined on oath, and entered as a witness in the calendar.

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Case of  
BAHADOOR  
SINGH.

PRESENT :

B. J. COLVIN, Esq., *Judge*.

## GOVERNMENT AND TARRA BEWAH

*versus*BROONDAH PURRIAH (No. 1.) KISHEN PURRIAH  
(No. 2.) AND HARROO BURAR (No. 3.)

Cuttack.

1857.

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Case of  
BROONDAH  
PURRIAH  
and others.

CRIME CHARGED.—Wounding and torturing Chucker Sennaputtee son of Tarra Bewah the co-prosecutrix, in having bound him hand and foot with ropes and branded him with a heated iron *dao* under the false accusation of theft on the 25th August, 1856.

CRIME ESTABLISHED.—Wounding and torturing Chucker Sennaputtee son of Tarra Bewah the co-prosecutrix, in having bound him hand and foot with ropes and branded him with a heated iron *dao* under the false accusation of theft.

Appeal re-  
jected. Medi-  
cal and other  
evidence being  
sufficient for  
conviction.

Committing Officer.—Mr. A. S. Annand, magistrate of Pooree.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 29th December, 1856.

*Remarks by the sessions judge.*—Chucker Sennaputtee witness (No. 4,) states that he served prisoner (No. 1.) as a labourer, that on asking for his wages he was accused of theft bound hand and foot and his body branded in about twenty-seven places with a heated sickle by prisoners Nos. 1, 2 and 3. Witness (No. 5,) proves that Chucker witness No. 4, was accused of theft by defendant (No. 1.) and was taken away from his house on the morning of the occurrence. The mother and three neighbours found the wounded man in a paddy-field about two hundred cubits from the house of prisoner No. 1. Witnesses Nos. 6 and 7, saw Chucker lying in the house of defendant (No. 1,) wounded and insensible and bound hand and foot, near a fire and two sickles, that the three defendants were present and that defendant (No. 1,) then informed them that he had branded Chucker because he had stolen money. Doctor Pringle deposes that the wounds from suppuration were at one time dangerous, also that they must have been made by a weapon shaped like the sickle produced in court. The law officer declares all the prisoners guilty, and punishable by *tazeer*, I therefore sentence them each to imprisonment for seven (7) years with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. B. J. Colvin.) The prisoners repeat, in their petition of appeal, that Chucker Sennaputtee sat down upon fire and burned himself to

involve them in trouble; but the medical evidence is against this view of the case, and corroborates the other evidence for the prosecution: which is conclusive of the prisoner's guilt. I reject their appeal.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND FUJGER SHAHA

*versus*

DIL MAHOMED (No. 13,) KALA TOFANOO NUSHO (No. 14,) TATEE MAHOMED ALIAS TATEE KATA NUSHO (No. 15,) BHENDA PULLEE (No. 16,) DOONDA PULLEE (No. 17,) MASHEEN NUSHO (No. 18,) KALACHAND ALIAS KALA BYRAGEE (No. 19,) DOOKHA PULLEE (No. 20,) KRISHNO DOSS BYRAGEE (No. 21,) PURMANUND DOSS (No. 22,) GODADHUR DOSS (No. 23,) BHEEKA ALIAS BHEEKA NUSHO (No. 24,) KADIM NUSHO (No. 25,) GONDUL NUSHO ALIAS GONDUR NUSHO (No. 26,) JHURROO SHAHA (No. 27, NON-APPELLANT,) DHUNNEERAM (No. 28,) KANCHIA CHOWKEEDAR (No. 29,) AND JHAPOO NUSHO (No. 30, NON-APPELLANT.)

CRIME CHARGED.—1st count, Nos. 13 to 26, dacoity in the house of Fujger Shaha and plundering therefrom property valued at Rs. 156-10; 2nd count, Nos. 13 to 26, 27, 28, 29 and 30, having possession of plundered property obtained by the above dacoity, knowing it to be such; 3rd count, No. 29, privy to the second count.

CRIME ESTABLISHED.—Nos. 14 to 25, dacoity in the house of Fujger Shaha, and plundering therefrom property valued at Rs. 156-10-0 and Nos. 13, 26, 28 and 29, of having possession of plundered property obtained by the above dacoity knowing it to be such.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinajpore.

Tried before Mr. James Grant, sessions judge of Dinajpore, on the 3rd September, 1856.

*Remarks by the sessions judge.*—This case was tried under Act XXIV. of 1843.

On the night of the 28th of May, 1856, the house of the prosecutor was attacked by some dozen dacoits, who carried off property valued at Rs 156-10, of which 108 Rs. worth was recovered. The prisoner Kanchia No. 29, was chowkeedar of the village and lived in the same house with his brother Dil Mahomed prisoner No. 13. The former was not forthcoming

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Appeals of some of the prisoners rejected; the evidence for their conviction being sufficient. Prisoners Nos. 28 and 29 released, as the evidence against them was inconclusive.

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on the night of the dacoity, and the prisoner Kala Tofanoo No. 14, having been seen the day before in their company, their house was searched and property found which Dil Mahomed said he had received from Gondul No. 26, a relation of Kala Tofanoo No. 14. They both were apprehended and confessed and the latter named his accomplices. In the foudjary the prisoners Nos. 14 to 24, confessed to the dacoity and the 2nd count, is clearly established against Nos. 13, 26, 28 and 29, by the evidence to the finding of the plundered property, and the prisoners' answers in the foudjary and sessions.

*Sentence passed by the lower court.*—Each to be imprisoned with labor and irons, Nos. 13 to 25 and 29 for seven (7) years and Nos. 26 and 28 for five (5) years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) There are *six* petitions of appeal in this case.

In the *first*, prisoner No. 13, Dil Mahomed, and prisoner No. 29, Kanchia Chowkeedar, appeal. Their petition refers to the mofussil confessions being extorted, and to the property not having been forthcoming on the first search. Prisoner No. 13, confessed to the police and before the magistrate; he was implicated in the confessions of other prisoners as one of the spies, and their associate in the dacoity; and property identified as prosecutor's was found with him on the day of his apprehension. At the sessions, this prisoner stated that a relative of prosecutor's, (Khoaj) and a burkundaz, by name Luteef, had arranged to place the property where it was found; and that he does not know what was written at the police or before the magistrate, as his confession; and that he was not at the dacoity, but on his rounds. None of his witnesses substantiate any part of this defence. We reject his appeal. Prisoner No. 29, is not mentioned in any of the confessions as taking part in the dacoity; and though it is not shewn that he was present to do his duty as chowkeedar against the dacoits, and suspicion attaches to him, still we think that a mere recognition of a thing so difficult to recognise as a piece of a torn sheet, which alone was found with him, is not alone, (as it stands,) sufficient for his conviction. We direct his release.

The *second* petition is that of prisoner No. 23, Godadhur Doss. He confessed in the mofussil, and before the magistrate. He is distinctly implicated in the confessions of the other prisoners; and some of prosecutor's property, not difficult to identify, viz. a pair of silver *kaseas*, was found to have been sold by his Bustomee. His defence at the sessions is that he did not confess; but that he was beat at the thannah, and that the magistrate put him in charge of the darogah to make him confess, and that no property was found on him. His appeal is on the same pleas. The witnesses he called for his defence in no way substantiated his innocence. We reject the appeal.

The *third* petition is from prisoners Nos. 14, 15, 18, 24 and 25. It is to the effect that the property, said to have been found in their possession, was found some distance from their houses; that their families were ill-treated to make them, prisoners, confess; that these extorted confessions at the police were copied in the magistrate's court, and that the sessions judge did not hear their defence. *Prisoner No. 14*, confessed in the police and before the magistrate, and is implicated, as the person who planned the affair, and as a leader, in the confessions of all the others, both before the magistrate and police. All these confessions agree; but do not bear the appearance of tutored confessions, as some essential incidents are mentioned in those to the magistrate, which were not stated in the confessions at the police. At the sessions, the defence of this prisoner No. 14 was, that he was beat to confess; that Khoaj, a relative of prosecutor's, and Luteef, burkundaz, put the property where it was found; and that as the prisoner was delegated to arrange a marriage for Bheeka, prisoner No. 24, with a member of prosecutor's family, about which there was a dispute, the prosecutor's family have arranged to charge him falsely, from enmity. The property found with this prisoner was duly identified, (some of it consisting of female ornaments,) and he in no way substantiates his defence by his witnesses. The case of *prisoner No. 15*, Tatee Mahomed, resembles that of the preceding. He urges, in addition, that when he was a factory-paik he made Khoaj, a relative of prosecutor's, pay his dues; and hence Khoaj has falsely got up this case against him. He in no way substantiates his defence. We reject his appeal. *Prisoner No. 16*, confessed at the police and before the magistrate. Before the sessions he says he does not know what was written as his confession in either place. Part of the property found with him was a silver ornament, capable of identification, and it was duly identified as prosecutor's. This prisoner was implicated in the confessions of the others, both before the police and the magistrate: and does not substantiate either his innocence of this crime, or his good character. *Prisoner No. 24* confessed to the magistrate and police. He is implicated in the confessions of all the others at both places as the leader; and his being so appears supported by the fact that a leader's share of the property was found with him, amongst which were silver ornaments duly identified as prosecutor's. His defence was that he was ill; that the darogah had placed the property in the ground; and that Khoaj, a relative of prosecutor's, then proceeded to produce and identify them; further that prosecutor has enmity with him in regard to a negotiation for a marriage. This defence is in no way substantiated. We reject the appeal. *Prisoner No. 25*, Kadim, confessed to the police and to the magistrate; and four articles of property, ornaments and house

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utensils, duly identified as prosecutor's, were found with him. He is a servant of Bheeka No. 24. His defence is, that he was beaten at the police to confess; that the burkundaz got any thing written as a confession; and that he pleaded before the magistrate that Luteef burkundaz and Khoaj placed the property in the Sowas-rice where it was found. But no part of this defence is substantiated; and we therefore reject the appeal.

The *fourth* petition contains the appeal of *prisoner No 20, Dhooka*. He was implicated in the confessions of all the others, and spoken of as a leader. He confessed to the police and to the magistrate; and property (some being ornaments), duly identified as prosecutor's, was found with him. His defence at the sessions was that *because* Khoaj sold a plough to another party at a higher price than that offered by prisoner, they had a dispute; and therefore Khoaj had falsely accused him: further that Luteef burkundaz beat him, on which he produced some property of his own. His appeal is to this Court of the same tenor; but he adds that the sessions judge would not listen to his defence. We find that he had full opportunity to call witnesses to that defence, but failed in any way to clear himself. We reject his appeal.

The *fifth* petition is from prisoners Nos. 16, 17, 19, 21, 22 and 28. *Prisoners Nos. 16 and 17*, are brothers, and live together; they both confessed before the police and magistrate, and are implicated in the confessions of other prisoners, who all agree that they met at the house of prisoner No. 17, which fact these prisoners also admitted at the thannah, and to the magistrate. Articles Nos. 29 to 36, of the comparative statement were found with them. They said in their appeals that the property found with them was left by Bheeka, (prisoner No. 24,) but without any knowledge on their part that it was obtained by gang robbery. In the sessions, however, their defence was that the property was put where it was found, by the police and Khoaj, *i. e.* the person before mentioned as prosecutor's relative. This plea is not in any way proved, nor any thing shewn in favor of their innocence. We reject their appeals. *Prisoner No. 19*, Kalachand Byraghee, is implicated in the confessions of the other prisoners, both before the police and the magistrate. He confessed in both those places. Articles of silver, identified as prosecutor's, were found with Jhurroo, who said he got them from this prisoner. His defence at the sessions was that the Buxee beat him at the police, that the magistrate ordered him to be beaten when before his court; and that the property is his own. He in no way substantiated this defence. His appeal is, that the prosecutor did not identify the property. But we find that he could not do so, nor could it agree with prosecutor's list, because the form of the articles had been

changed. We reject the appeal. *Prisoner No. 21*, is also a Byraghee. His position is the same, in regard to the evidence against him, as that of the preceding prisoner. His defence at the sessions was that he was beat to make him confess at the police, and that he did not confess to the magistrate: and that he did not know whence the property, which was found with him, came. He in no way substantiates his innocence. In his appeal he urges that the prosecutor did not claim the property found with him. It consisted of a silk *saree*, and silver necklace. He further urged that Bheeka, prisoner No. 24, has enmity against him, and that the sessions judge did not hear his defence. We find the property was duly identified by prosecutor's witnesses; that it was in prosecutor's list given on the 29th May. Further no proof of the enmity alleged, and no grounds for the plea that the sessions judge did not hear prisoner's defence, exist. *Prisoner No. 22*, is also a Byragee and the evidence against him is of the same character as against Nos. 19 and 21. The prisoner in his defence at the sessions pleaded that he had sold the *huslee* found with him to Kisto Doss, prisoner No. 21. In appeal here he adds to this plea that a *lota* found with him was not claimed by prosecutor. The *huslee* is the property identified as prosecutor's on which and his own confessions he is convicted. We see no reason to interfere with the conviction. In regard to *prisoner No. 28*, convicted of knowingly receiving property obtained in dacoity, he is not mentioned in any confessions as concerned, or as having any guilty knowledge of the character of this property. We think the evidence against him insufficient, and direct his release.

The *sixth* petition is that of *prisoner No. 26*. This prisoner confessed to the magistrate that the house-utensils found with him were given him by Kala Toofannee, his father-in-law, prisoner No. 14; and that he (prisoner) had a guilty knowledge of their being acquired by robbery. At the sessions the prisoner denied this statement; and urged that he prisoner had enmity with Khonj, as he had dunned the latter for money due. In appeal he urges that there has been enmity about land. Neither plea is substantiated. We do not see sufficient reason to interfere in regard to this prisoner.

We think the confessions can be well trusted in this case. They were the result of one prisoner first confessing, and producing property; and the others being apprehended and at once confessing, as the clue to each criminal was progressively obtained. Further, the confessions at the police and to the magistrate not only agree together, but the circumstances of the case agree with the confessions; *firstly*, as to the manner in which the knowledge of the locality of the box in which prosecutor's property was kept, was acquired; and the coincidence of the prosecutor and his servant sleeping, the one along side, and

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1857. the other on the box, as if because the property was kept there ;  
 March 30. *secondly*, as to the details connected with the Byragee's coming  
 Case of with Kala Toofannee, and their proceedings there, and the junction  
 DIL MAHO- *thirdly*, as, to the prosecutor stating that  
 MED and others. the party spoke Hindoostannee, which the confessions state that  
 the Byragees did ; *fourthly*, as to the money found with the pri-  
 soner corresponding to what would be about the shares under  
 the exact and detailed distribution which the long time they  
 took to it, and the particulars they gave of it, shew to have been  
 made. There are additional points, i. e. as to the parties who  
 went in, saw the houses, and as to those who staid out, and other  
 matters, which corroborate the confessions. The prisoners  
 convicted in no way substantiate any valid defence.

We reject the appeal of the prisoners Nos. 13, 14, 15, 16, 17,  
 18, 19, 20, 21, 22, 23, 24, 25 and 26. We acquit the prisoners  
 Nos. 28 and 29. We think that the prisoners Nos. 14, 15,  
 19, 20 and 24, might well have been sentenced to a more severe  
 punishment.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

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GOVERNMENT AND SEEBRAJ OSWAL

*versus*

Assam.

KIRPAI (No. 5, APPELLANT,) AND JOYHA (No. 6.)

1857.

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Case of  
 KIRPAI  
 CHUEN.

CRIME CHARGED.—1st count, burglary about two or two and  
 half years ago, stolen during the night from a boat at or near  
 Midnapore Guow, property among which was a *turban* valued  
 2 Rs.; 2nd count, knowingly receiving or keeping property  
 acquired by theft as above.

CRIME ESTABLISHED.—Having knowingly had in their  
 keeping property acquired by theft.

Prisoner re- keeping property acquired by theft.  
 leased; the Committing Officer.—Captain E. T. Dalton, magistrate of  
 evidence to Luckimpore.  
 guilty know- Tried before Major Hamilton Vetch, deputy commissioner of  
 ledge being Assam, on the 29th November, 1856.  
 insufficient.

*Remarks by the deputy commissioner.*—It appears that some  
 two and a half years ago, when the prosecutor's boat was pass-  
 ing up the Kullung river near the village in which the prisoners  
 reside, thieves came and stole some property from it through  
 the window and it is alleged, and proved, that a *turban* which  
 was seen in the hand of the prisoner No. 5, was a part of the  
 stolen property. The prisoners pleaded *not guilty*, No. 5, that

he had obtained it in pledge from No. 6, and No. 6, that he had inherited it from his father.

It appears on the evidence that No. 5, did get a *turban* of the kind from No. 6. It further appears that Nos. 5 and 6, are uncle and nephew, and had lived together and it is proved, that they have both had possession of it.

After considering the evidence in this case, I do not find any proof that either of the prisoners committed the theft, but I convict them both, on violent presumption, of having knowingly had in their keeping property acquired by theft, and the prisoner No. 5, Kirpai having been previously convicted and sentenced on a charge of burglary and theft.

*Sentence passed by the lower court.*—No. 5, one year's imprisonment with labor and irons. No. 6, five years' imprisonment with labor and irons being a consolidated sentence in this and case No. 34, and to pay a fine of Rs. 30-4-9½ under Act XVI. of 1850.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We do not think the evidence of guilty knowledge sufficient to warrant the conviction. The *turban* is identified by prosecutor and one witness of many for the prosecution, and that one states that it is shorter than it was formerly. Kirpai prisoner No. 1, has been before convicted of burglary and theft. This is the evidence for the prosecution. On the other hand appellant's plea that it was pledged to him by Jughur Chewul, which he urged from the first, is admitted as true by Jughur, and deposed to by witnesses. We admit the appeal, and order the release of appellant.

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Case of  
KIRPAI  
CHURN.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND DOOLLUB KATEHARA

*versus*KURRIMOOLLAH (No. 3,) GOPAL SINGH (No. 4.)  
KALENATH DAOAL (No. 5.) CHUNCHEA ALIAS SUN-  
CHEA NUSHO (No. 6.) DEWANUTHOOLLA (No. 7.)  
ZENARDEE (No. 8.) KOTHEA NUSHO (No. 9.) KHOO-  
DEE MOOCHEE (No. 10.) CHEDRA MOOCHAR (No.  
11.) AND HARA NUSHO (No. 12.)

Dinagapore.

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Case of  
KURRIM-  
OOLLAH  
and others.Appeal re-  
jected. Pri-  
soner's confes-  
sions and evi-  
dence for the  
prosecution  
showing the  
conviction to  
be proper.CRIME CHARGED.—1st count, dacoity in the house of Dool-  
lub Katehara and plundering therefrom property valued at Rs.  
18-10 ; 2nd count, having possession of plundered property ob-  
tained by dacoity, knowing it to be such.CRIME ESTABLISHED.—Nos. 3, 4, 6, 7, 8, 9, 10 and 11 of da-  
coity and Nos. 5 and 12 of having possession of plundered proper-  
ty obtained by dacoity, knowing it to be such.Committing Officer.—Mr. T. E. Ravenshaw, magistrate of  
Dinagapore.Tried before Mr. James Grant, sessions judge of Dinagapore,  
on the 28th August, 1856.*Remarks by the sessions judge.*—This case was tried under  
Act XXIV. of 1843.On the night of the 5th of June, 1856, the house of the pro-  
secutor was attacked by dacoits who carried off property valued  
at Rs. 18-10, the greater part of which was found upon the pri-  
soners. In the mofussil the prisoner No. 5, "Kaleenath" con-  
fessed and produced plundered property which he subsequently  
claimed as his own. The prisoner No. 12, Hara, produced plun-  
dered property which, in the mofussil and foudary, he said he  
had seen other prisoners place where he pointed it out and  
which before me he claimed as his own. The property pro-  
duced by them, however, is clearly proved to be the prosecutor's  
and they were named by them as accomplices. All the other  
prisoners confessed both in the mofussil and foudary and did  
not name any witnesses for their defence, though before me  
they pleaded *not guilty* and pleaded enmity on the part of the  
witness, No. 2, Fukeer, and another man who gave information  
against the prisoners who were first apprehended and named  
the others. The evidence of the prisoners' witnesses to charac-  
ter was unfavorable and refuted several of their assertions against  
the witness No. 2, Fukeer.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) All the prisoners have appealed, but without preferring any special pleas. We have gone through the record, and find that all the prisoners, except Hara, No. 12, confessed to having committed the dacoity, and produced property belonging to and identified as prosecutor's by the evidence for the prosecution. Hara confessed to privity, and produced some utensils from a tank, which he said had been deposited there after the dacoity by Sunchea, No. 6. The prisoners, except Kali Daoal, No. 5, repeated their confessions before the magistrate; and we have no reason to question their truth, or to suppose that they were given otherwise than voluntarily. The prisoner No. 5, pleads an *alibi*, which, however, he has been unable to substantiate. The conviction of the prisoners, appellants, appears right and proper. We therefore reject the appeal.

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Case of  
KURRIM-  
GOOLAH  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

OMACHURN DAY.

Chittagong.

1857.

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Case of  
OMACHURN  
DAY.

**CRIME CHARGED.**—Perjury, in having, on the 14th March 1856, corresponding with 2nd Choitro 1217 M. S. deposed under a solemn declaration, taken instead of an oath, before the moonsiff of Howlah within the district of Chittagong, that the signature of Ramshebuk Dhur as a witness on the back of a pottah is not Ramshebuk Dhur's own hand-writing; and in having on the 22nd August, 1856, corresponding with 6th Bhadon 1218 M. S. intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the additional sessions judge of this district, that the signature of Ramshebuk Dhur, as a witness on the aforesaid pottah, is Ramshebuk Dhur's own hand-writing; such statements being contradictory of each other on a point material to the issue of the case.

Prisoner's appeal rejected his plea of being in a fit when deposing being false.

**CRIME ESTABLISHED.**—Perjury.

**Committing Officer.**—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. G. C. Fletcher, additional sessions judge of Chittagong, on the 4th September, 1856.

*Remarks by the additional sessions judge.*—Concurring with

1857. the law officer, I convicted the prisoner, Omachurn Day, of perjury.

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DAY.

The reason for passing the above order of conviction, was that I was satisfied by the evidence,\* that the prisoner had intentionally and deliberately, under solemn affirmation taken instead of an

\* Wit. No. 1, Joy Gopal Peishkar.  
" " 3, Obhoychurn Doss.  
" " 4, Tara Sunkur Sein.  
" " 5, Juggoobundoo Sein.

oath, delivered, before the two courts of justice named in the indictment upon the dates therein specified two depositions directly contradictory of each other on a point material to the issue of the case in which he was being examined on each occasion, that is to say, in regard to the genuineness of the signature of a witness to a pottah, which was alleged by the plaintiff to be a forged instrument and by the defendant to be genuine and being so satisfied, considered that the prisoner had been guilty of perjury.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The perjury is clearly and distinctly proved, and the pottah fully identified. The prisoner pleads that he was subject to fits, which took away his powers of reflecting on what he was saying, and that he labored under one when he deposed before the sessions judge. There is some evidence adduced by him in support of the plea of his being subject to such fits, but none to his having been laboring under one of them when he deposed to the sessions judge. With reference to this fact, and to the Court's Resolution,\* and the judge's ex-

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\* *From the sessions judge of Chittagong, No. 17, dated the 23rd March, 1857.*

I have the honor to acknowledge the receipt this day of a copy of the Court's resolution No. 201, dated the 18th instant. With reference to the instruction in the third paragraph of that resolution, I have the honor to state that my verdict on the trial of Omachurn Day for perjury was uninfluenced by the testimony of the witnesses, who were examined for his defence, because I considered their evidence irrelevant. I cannot without reference to the record precisely state the prisoner's plea: but taking it to have been as stated in the second paragraph of the Court's Resolution, it amounted to one of these, either that he was nervous when examined on the 22nd August, 1856, or that he was attacked by a fit, which rendered him partially ignorant of what he was saying on that occasion. The evidence, above referred to was irrelevant because it did not refer to the point whether the prisoner was or was not, while deposing on the 22nd August, 1856, nervous, or suffering under, or from, the effects of a fit. Had the prisoner been in fact at the time of making his deposition nervous, or suffering from a fit, he could not have had any difficulty in adducing, to prove the fact on his own trial, the evidence of one or more of the many respectable persons present on the former occasion. Had any morbid affection of mind or body been apparent from the prisoner's state or demeanor while deposing as a witness, I should not

planation on it, we reject the appeal.

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DAY.

have been guilty of such a heinous dereliction of duty as to have ordered his commitment for perjury. The trial in the course of which the prisoner deposed in contradiction of his own deposition previously given before the moonsiff of Howlah was conducted with the assistance of the jury named in the margin.\* Having this day referred to those jurymen, I have ascertained that their recollection precisely tallies with mine that the prisoner Omachurn Day was at the time when he delivered in their presence and mine,

\* Moonshee Sudderoodeen.

Moonshee Mahumunud.

Mufzul Poormachunder Kasta-  
gree.

his deposition on the trial of Ramshebuk Sein for forgery in perfect possession of all his faculties of mind and body. As the Court observes that I was silent (in my decision on the trial of Omachurn Day,) as to his state and demeanor on the 22nd August, 1856, I regret that I should not have recorded in the document referred to in my remarks on the point. The omission to record such remarks was probably due to the consideration that it would be supererogatory to remark that the person, whose commitment for perjury I had ordered by reason of his having contradicted as a witness before myself a deposition made by him before another court, was at the time of deposing before me in the full possession of his senses. I may observe further that in recording on the 22nd November in a statement of my reasons for convicting the prisoner, that I was satisfied that he had intentionally and deliberately delivered before two courts of justice on one of which I presided two contradictory depositions, it seems to me that I declared by necessary implication, that the prisoner, when deposing before me was in the full possession of his senses. Otherwise he could not have been justly declared to have deposed intentionally and deliberately.

The record just referred to was not made it is true till the 21st November, nearly three months after the date of the prisoner's deposition; but a declaration to the same effect as that contained in the said record was included in my proceeding held on the day after the date of the deposition, in the words, "Whereas one of the witnesses examined in this trial, viz. Omachurn Day, wilfully delivered yesterday the 22nd August, 1856, &c." Copy of this proceeding, which conveyed to the magistrate an order for the witness's commitment, is I presume with the records of the magistrate's proceedings now before the court.

*Resolution of the Nizamut Adawlut.---(Present: Messrs. G. Loch and H. V. Bagley, No. 201, dated 18th March, 1857.*

The Court observe that the sessions judge having been called upon to state his reasons for the conviction in the case of Omachurn Day by their Resolution of the 23rd October last No. 885, gave those reasons, as follows, under date 21st November.

"The reason for passing the above order of conviction was that I was

\* Wt. No. 1, Joygopal Peshkar.

" " 3, Obhichurn Dass.

" " 4, Tarasunker Sein.

" " 5, Jugoobundoo Sein.

satisfied by the evidence,\* that the prisoner had intentionally and deliberately under solemn affirmation taken instead of an oath, delivered before the two courts of justice named in the indictment upon the dates therein specified

two depositions, directly contradictory of each other, on a point material to the issue of the case, in which he was being examined on each occasion, that is to say, in regard to the genuineness of the signature of a witness to a *pottah*, which was alleged by the plaintiff to be a forged instrument, and



## PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

## GOVERNMENT

*versus*

KALEECHURN SHAHA.

Rajshahye.

1857.

March 31.

Case of  
KALEECHURN  
SHAHA.Appeal re-  
jected; pri-  
soner's pleas in  
his defence and  
appeal being  
insufficient.

CRIME CHARGED.—1st count, severely wounding Thakurdas-  
see Dassya, and Mohabharut Shaha with  
intent to murder; 2nd count, wounding.\*

CRIME ESTABLISHED.—Severely wounding Thakurdassee  
Dassya with intent to murder and wounding Mohabharut  
Shaha with intent to do him grievous bodily harm, also wound-  
ing Jadub Shaha.

Committing Officer.—Mr. H. L. Dampier, officiating joint-  
magistrate of Pubna.

Tried before Mr. L. Jackson, officiating sessions judge of  
Rajshahye, on the 15th September, 1856.

*Remarks by the officiating sessions judge.*—The prisoner is  
charged with assault upon his wife, and brother, and cousin,  
with intent to murder the first and Mohabharut Shaha and to  
wound Jadub Shaha.

He confessed before the darogah, but denied before the ma-  
gistrate and called witnesses to his defence.

In this court, the prisoner when called on to plead, remained  
mute, and could not be induced either to answer to the charge,  
or to reply to any question and his demeanour was wild and  
vacant.

by the defendant to be genuine; and being so satisfied considered that  
the prisoner had been guilty of perjury."

The Court now observe that before the magistrate, and before the ses-  
sions judge the prisoner pleaded that his perjury was not wilful, but that  
he was subject to fits in which he had not complete knowledge of what  
he said; that nervousness produced them; that never having been in court  
before except in this case he was suffering under this affection when he  
deposed on the 22nd August, 1856, to the additional sessions judge. (Mr.  
G. C. Fletcher.) He adduced some witnesses, who substantiate the above  
statements, except as to his state at the time of giving that deposition on  
22nd August, on which date they did not happen to be present. Yet the  
additional sessions judge (Mr. Fletcher) is entirely silent both as to the  
reasons for not referring to this evidence, or as to the state and demeanor  
of the witness before him on the 22nd August, 1856.

The sessions judge will now state his grounds, &c. for entirely rejecting  
the evidence of these witnesses, and also report what appeared to be the  
state and demeanor of the witness when deposing before him.

I therefore took preliminary evidence (Mahomed Ekran jail darogah, and Firman burkundaz) with the view of ascertaining the state of his mind and being satisfied that this demeanour was assumed, I recorded a plea of not guilty on his behalf, and proceeded with the trial.

The facts clearly deposed to by the wounded persons, and others, were briefly these. The prisoner who has been two or three years married to his young wife (she is now pregnant with her first child) and is described as of a moody and morose disposition, seems to have imbibed a suspicion entirely groundless, of his wife's infidelity he repeatedly questioned her, who it was that conversed with her, and she as constantly denied having conversation with anybody.

He returned to the subject on the night or early in the morning of the 2nd August last, and on her denying the accusation again, he left the room where they were sleeping and presently returned with his *dao*, he then sat on her chest, and with this *dao*, inflicted several serious and dangerous wounds upon her head, face and neck as detailed in the medical evidence. The outcries awakened the rest of the family, first, the prisoner's mother who found his door fastened and was unable to effect an entrance, his elder brother Mohabharut who next appeared, considered himself forbidden by Hindoo customs to enter the room, and the person who actually forced an entrance, was the prisoner's cousin Jadub Shaha, whom the prisoner wounded slightly with the *dao*, and rushed out; in passing his brother who was sitting, he says outside, the prisoner struck him also some very severe blows with the same weapon, inflicting wounds of a dangerous character. He then made his escape, and was not secured until the following day.

The prisoner's confession at the thannah, recites that having left his room early in the morning, he returned and found his brother, and cousin both there, each averring that he had surprised the other with the prisoner's wife; on which in a fit of passion he had attacked them all with his *dao*. This view of the case, however, is distinctly negatived by the evidence of the mother, who was aroused by the screams of the wife, and found her and the prisoner in their apartment, with the door closed from inside.

The facts are distinctly proved; any presumption of insanity on the prisoner's part, is clearly rebutted, and the witnesses for his defence prove nothing in his favor.

The jury (Brojsoonder Sen and Moonshee Gazeeooddin) brought in a verdict of guilty, except as to the intention to murder, which they did not find.

On the latter point, I have been unable to agree with them, being of opinion that the previous ill-feeling, the going to fetch

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Case of  
KALEECHURN  
SHAHA.

1857. the weapon, the nature of it, and the injuries inflicted, certainly indicate the intention of taking away life. I have, therefore, under all the circumstances, passed a sentence of fourteen years' imprisonment with labor in irons.

March 31. Case of KALEECHURN SHAHA. *Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The evidence shews clearly that prisoner wounded his wife, his brother, and his cousin with his *dao*. The civil surgeon deposed that the wounds on the wife were dangerous to life, made with a cutting instrument, and with considerable violence; that those on his brother involved danger, divided the muscles of the neck, and were dealt with the whole strength. The prisoner confessed at the police, and his confession was duly attested. To the magistrate, he stated that he slept in his shop separately from his wife; and found her wounded, he did not know by whom. In the sessions he remained mute. The civil surgeon clearly deposes that he found no insanity, having made careful observation of the prisoner, and that prisoner could distinguish right from wrong. The witnesses (five of them his relatives, and nine of them in all) whom he called in his defence, stated that he was silently sullen at times; but it is not in any way shewn that he was of unsound mind, so as not to be fully accountable for his actions. The tenor of his wife's deposition, taken together with his own duly proved confession, shew that a morbid jealousy, apparently of his own relative, Jadub, led him to make this attack. His appeal is to the effect that he has at times rheumatic attacks affecting his power of speech. But none of the evidence on the record shews this, nor is it compatible with his defence before the magistrate. I reject his appeal.

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PRESENT:

B. J. COLVIN, Esq., *Judge*.

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24-Pergun-  
nahs.

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GOVERNMENT, MADAREE NAPIT AND ANOTHER

March 31.

*versus*

Case of  
KAMALDEE  
CHOWKEE-  
DAR.

KAMALDEE CHOWKEEDAR.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor No. 1, (being at the time a police chowkeedar) in which property valued Co.'s Rs. 26-2 annas was stolen; 2nd count, having in his possession the stolen property knowing it to have been stolen in the said burglary; 3rd count, privy to the above burglary.

Appeal re-  
jected; no  
grounds exist-  
ing for inter-  
ference.

CRIME ESTABLISHED.—Being an accessory to the burglary both before and after the fact, and of having stolen property in his possession well knowing it to have been acquired by burglary.

Committing Officer.—Honorable A. Eden, officiating joint-magistrate of Baraset.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 24th November, 1856.

*Remarks by the additional sessions judge.*—The two prosecutors are cousins and live together. On the night of the 30th July last, they were disturbed by a noise, and getting up from where they were lying in the verandah, entered their house when a thief rushed past them out of the door. They called out to their neighbours to come and assist them and witnesses Nos. 1, 13 and 14, arrived at once. They subsequently found that the house had been robbed of three brass plates and some other articles. The next day the first prosecutor told the prisoner, who is the Mohulla Chowkeedar, to report the matter at the thannah, which he undertook to do. Not doing so, however, the prosecutors went themselves to report, the prisoner going with them, four days after the robbery. The thannah mohurrir at once came to the village to investigate the matter, when the prosecutors communicated to him their suspicion that the prisoner's conduct made them imagine he was probably the thief. The mohurrir arrested the prisoner and had his house searched. In it there was found nothing; but in a tank near his house, were found two brass plates, which have been identified as the prosecutor's property, and which the prisoner at once admitted he had received from three persons who had committed the burglary, but whom he had refused on their invitation to join in the robbery. Before the deputy magistrate of Kalaroa, the prisoner again made a quasi confession. He said three persons had invited him to join them in a robbery at prosecutor's house; that he had refused; that he was threatened for refusing; that on the night of the robbery after it had been committed, the burglars came with the two brass plates produced in court, saying they were the proceeds of the robbery, and asking him to receive charge of them; that he refused to do so, on which the things were concealed by the persons who brought them in a small piece of water close to his, prisoner's house. This property was found, it has been proved from the search made for it, and not from any information or assistance afforded by the prisoner. On its *first* discovery, he denied all knowledge of it.

The prisoner's defence before me is a total denial of the charge without further explanation. He says he alone reported the theft to the police, which the record shews is not the case. He cites with witnesses to character, two of whom only give him a negative good one.

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CHOWKEE-  
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KAMALDEE  
CHOWKEE-  
DAR.

In concurrence with the law officer, I convict the prisoner of being an accessory to the burglary both before and after the fact, and of having stolen property in his possession, well knowing it to have been acquired by burglary. I sentence him to five years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. B. J. Colvin.) I see no reason to interfere with this conviction, or with the sentence passed upon the prisoner.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

GOLUCKCHUNDER MANJEE.

Jessore.

CRIME CHARGED.—Wilful murder of his wife Harani Jaliani, on the night of the 5th of September, 1856, 22nd Bhadro, 1263, B. S.

1857.

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CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. E. W. Molony, magistrate of Jessore.

Case of  
GOLUCK-  
CHUNDER  
MANJEE.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 16th December, 1856.

*Remarks by the officiating sessions judge.*—The circumstances attending this case as shown in the evidence are as follows.

Appeal re-  
jected; pri-  
soner's confes-  
sion, and the  
independent  
evidence prov-  
ing his guilt.  
Remarks on  
sentence.

On the night of the 5th September, the prisoner set up a noise, vowing his wife the deceased had gone out to ease herself of the wants of nature and that an alligator had carried her off. The next door neighbours gathered round immediately and made an unsuccessful search with the prisoner for deceased. The following morning witness No. 21, who is the village talookdar and apparently a clever far-seeing person not easily imposed upon, called the prisoner before him and told him plainly he did not believe the story about the alligator. Possibly a little gentle persuasion was resorted to, but it resulted in the prisoner admitting he had pushed his wife into the water and his pointing out her corpse which was found floating in some water about three feet in depth, and with a rope bound round the neck affixing to the jungle. The corpse was taken to the police and an inquest held on it, but except scratches, which might easily have been occasioned by the parties dragging the corpse from the thick cane jungle it was found in, no marks of violence were observed on it. The civil assistant surgeon examined the corpse likewise, though when it was rather in a decomposed state. He did not observe any marks of external violence and could not give any opinion as to the cause of death. His deposition was taken on oath before the magistrate in the presence of witnesses as he was about to leave Jessore to join another appointment. Being duly attested agreeably to Circular Order No. 42, dated 27th March, 1840, his evidence such as it is, is available.

The prisoner confessed voluntarily before the police to having pushed his wife into the water and that her death was caused

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thereby. The reasons assigned are inconsistent, and scarcely such as one would imagine would induce a husband to take away his wife's life. Before the magistrate and in this court the prisoner pleads *not guilty*, but does not set up any defence.

\* Ishanchunder Uddy.

Gopeenath Roy.

Luckeenath Chuckerbutty.

The case was tried with the aid of a jury\* under the provisions of Section 3, Regulation VI. 1832, who find a verdict of

guilty on the lesser charge of culpable homicide, I coincide in this verdict as it is not clear that there was any previous intention to destroy the deceased though I consider the presumptive evidence very strong that the deceased met her death by the prisoner's act and with his knowledge and a strong effort on his part to conceal the true circumstances attending it. I convict him therefore of culpable homicide and sentence him to imprisonment with hard labor in irons for seven years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence on the record shews that prisoner awoke the neighbours in the night, stating that an alligator had carried off his wife; that they searched and could find no traces of her; that there had been disputes between prisoner and his wife, either on account of prisoner not being able to have his mother to live with him from his wife's opposition, or (as is stated by some witnesses) on account of the wife's misconduct; that next morning the talookdar and villagers intimated to prisoner that he must tell the truth, and that it was considered improbable that an alligator should have taken the deceased, and threats were used towards him; that he then told them he had squeezed her throat, and thrown her into the water, and so killed her, and then dragged her body into some cane jungle; and that he thence produced the body, which had a rope round the neck, but no marks of violence, or of an attack as of an alligator. The evidence also shews that the prisoner confessed to the police to the same effect that he had told his story to the villagers. The prisoner stated to the magistrate, that he and deceased had quarrelled about the beating of their child, and had words; that she got up, and left the house saying she would not return; and that she did not; that the body was then found in the place described by the villagers, but by the chowkeedar, and *not* by the prisoner. In the sessions he stated that he had never confessed to the villagers, and that they and the talookdar got a false confession written at the police. In his appeal to this Court he urges that his wife was sick, and fell into the water, which had risen from the inundation; and that the villagers and talookdar made him confess, and that he was so unsettled by his wife's death that he did not know what was written, but that he never did confess that he had killed his wife. The prisoner's pleas are most con-

tradictory, and those favorable to himself are in no way substantiated. The confession to the police is duly attested. We see no ground to interfere in his favor with the order of the court below. We therefore reject the appeal. As we cannot enhance the punishment, we can only further observe that we consider a graver crime was proved, and a more severe sentence called for.

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Case of  
GOLUCK-  
CHUNDER  
MANJEE.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND NENDOOSOO SIRCAR

*versus*

TOOKHAR NUSHO (No. 1,) AND KHALASS NUSHO  
(No. 2.)

Dinagpore.

**CRIME CHARGED.**—1st count, burglariously entering the house of the plaintiff and stealing therefrom property valued at rupees 103-1-6; 2nd count, having possession of stolen property, knowing it to be such.

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Case of  
TOOKHAR  
NUSHO and  
another.

**CRIME ESTABLISHED.**—Burglariously entering the house of the plaintiff and stealing therefrom property valued at rupees 103-1-6.

**Committing Officer.**—Mr. W. J. Longmore, joint-magistrate of Dinagpore.

Tried before Mr. J. Grant, sessions judge of Dinagpore, on the 18th August, 1856.

Appeal re-  
jected; pri-  
soner in no  
way substan-  
tiated his pleas  
in his defence  
and appeal,  
and the evi-  
dence of his  
guilt, was suf-  
ficient.

*Remarks by the sessions judge.* On the night of the 30th of May, 1856, a burglary was committed in the house of the prosecutor, and property, valued at rupees 103-1-6 stolen. The prisoners confessed in the mofussil and foudary and a stolen necklace, sold by one of them, was produced by the purchaser in their presence. The *futwa* of the law officer convicted the prisoners on the 1st count, and I concurred.

*Sentence passed by the lower court.*—Three years' imprisonment each with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner puts forth no special ground of appeal, but prays for a reference to the record. The prisoner confessed before the police and the magistrate. The property mentioned by him as having been pledged with witness No. 9, was at once produced by that witness, and proved to be prosecutor's. The prisoner's defence at the sessions was that he was beat to make his confession at the police; that he did



1857. not pledge the property with witness No. 9; that the prosecutor is his enemy, and that witness, No. 5, had a quarrel with him about a tree. The prisoner, however, does not substantiate this defence. We reject the appeal.

March 31. Case of TOOKHAR NUSHO and another.

PRESENT :

G LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND BHICHOOK LALL

*versus*

Patna. SHEIKH ENAETALLY (No. 1,) GOBIND SINGH (No. 2,) AND GIRDHAREE SINGH. (No 3.\*)

1857. CRIME CHARGED.—1st count, burglary in the malkhana of the Meetapore jail, and theft of cash and property of the prosecutor, valued at rupees 568-6 from the said malkhana; 2nd count, No. 1 receiving and being in possession of a part of the aforesaid cash, viz. Co.'s Rs. 358, knowing the same to have been acquired by burglary and theft.

March 31. Case of SHEIKH ENAET ALLY and others.

Prisoner released; identification of the cash, and other circumstances not being sufficiently proved to warrant a conviction.

CRIME ESTABLISHED.—No. 1, being accessory after the fact to burglary and theft of 358 Rs. and of receiving and concealing the same, knowing it to have been acquired by burglary and theft; No. 2, accessory after the fact to burglary and theft of 358 Rs.

Committing Officer.—Mr. J. M. Lowis, officiating magistrate of Patna.

Tried before Mr. R. N. Farquharson, sessions judge of Patna, on the 18th December, 1856.

*Remarks by the sessions judge.*—The prisoners plead *not guilty*.

The prisoners are No. 1, the native doctor of the jail having his home and property at Phoolwary, about four miles from the jail premises; No. 2, a prisoner in jail for four years for affray, assistant dresser in the jail hospital; No. 3 maternal uncle of No. 2, employed in jail hospital as cook.

The facts are fully detailed in the calendar and magistrate's separate English statement. They are shortly these. On the 3rd December last, early in the morning, one of the jail store-rooms, having a door leading into the jail hospital yard, was found broken open and a box therein to have had its lid wrenched off from the hinges. The prosecutor, Bhichook Burkundaz, in whose charge the room was, complained of a bag of 550 Rs.

\* Acquitted by the lower court.

and some ornaments valued at Rs. 18-6 having been taken from the broken box. The foudary nazir was sent to enquire into the case and in the evening reported to the magistrate that there were strong suspicions against the native doctor, but no proof to substantiate them.

On the 4th December, the magistrate himself proceeded to the jail and acting on the hints he had received from the nazir, induced Gobind, prisoner No. 2, so far to confess complicity as to point out where the money was concealed and to name Imam Ally, witness for the prosecution No. 3, as a party concerned in the theft. Imam Ally on hearing his name mentioned came forward and acknowledged privity, so far as to having seen the prisoner Gobind, give a bag of rupees to the prisoner Enaet Ally, who locked the same up in the *duwai khana*. Imam Ally was then admitted as evidence for the prosecution. The *duwai khana* was searched by the magistrate in person on the 4th December, and nothing discovered till they came to a box belonging to the native doctor himself, prisoner No. 1, who produced the key, and within was found first some common white native garment then a mass of rupees scattered loose on some other clothes and about the sides and corners of the box itself. The native doctor on being asked to state the amount of his rupees, for he said they were his own property, would give no decided answer, said he once had 1000 Rs. there, but some were

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Wts. Nos. 4, 5, 6 and 7.

spent and that he believed there was something less in the box than 500 Rs. which was all he would say on the subject. On being counted, the contents of the box were found to be 358 Rs. but no bag or ornaments were forthcoming. The rupees were partly old and partly new coinage, about 140 as appeared in the sessions court were new and partly new, but very few of them bore that gloss which rupees fresh from the mint, and only once removed from the collectorate to the jail in the prisoner's waist band would have most certainly retained. Among the rupees taken by the magistrate from the box were some three or four with names written on them in Hinduee. The prosecutor, at the time of finding, was about to take these up and read them, saying, he could thereby identify them as his stolen property, but the magistrate stopped him, asking if he could without reading them tell the names written on the rupees he had lost, this he could not do and they were tied up with the rest without his having an opportunity of seeing them, and the subject, as regards these written upon rupees, not again mooted in the foudary investigation. In the sessions court, however, without any demand of the parties or further allusion to these rupees than that contained in the evidence of witness No. 4, the subject was renewed and the prosecutor again called on to state the names written on any of the rupees stolen from him, this

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and others.

he again said he could not do, but if the rupees were shewn him he could probably point out the persons from whom he had received them, stating at the same time that in his vocation of money-lender he only wrote the name of the payer on any coin which seemed doubtful and kept no other note of the transaction, nor did he keep any regular book of receipts and disbursements. The rupees were then shewn him and he immediately, read the three names, which will be found noted in his evidence, pointing out bonds received from all three among the papers he had given in to the magistrate in proof of his being a man of property, which had first, owing to his position, been doubted. He also named their several residences. They were accordingly summoned and in their evidence, taken on the second day of the trial (witnesses for the prosecution Nos. 18, 19 and 20,) fully corroborated the prosecutor's statements and proved that they had paid him single rupees within a short period of the theft, and that he had at that time written their names on the rupees they gave, to guard against injury to himself by receiving bad coin. These rupees were undoubtedly found in the native doctor's box and were claimed by him, as his own under the doubtful circumstances of his being unable to say, even approximately, how many rupees there were in the box of the money being scattered about the box as if hurriedly and shot out of a bag, of his not having previously said a word to any one of his having money in that box, of his intimacy with the prisoner No. 2, of the theft the preceding night, of his having been called into the hospital under a false pretence by prisoner No. 2, about the time the robbery is said to have been committed, of the hiding-place of the stolen rupees being indicated by prisoner No. 2, and witness No. 3, neither of whom could have any possible interest in inculcating the native doctor, of his being aware of prosecutor's riches and probably of the place of keeping his money. Thus far, all the circumstances enumerated above, from that of his not being able to name the sum of money in his box, are highly presumptive of the guilt of prisoner No. 1. The more direct evidence against him is that of the prosecutor and witnesses Nos. 2, 3, 8, 10, 18, 19 and 20, (witness No. 1, appears to me half an idiot, whose testimony I have altogether set aside) and the rupees identified as part of those stolen from the prosecutor Bhichook. The evidence against prisoner, No. 2, is his own admission of knowing where the stolen money was concealed, the money being found were pointed out by him. The evidence of his fellow-prisoners witnesses Nos. 2, 3, 8 and 10, and the general circumstances of the case as connected with the prisoner No. 1.

The evidence against prisoner No. 3, amounts to little beyond his being at the time in the hospital and being a near re-

lation of prisoner, No. 2, his name is mentioned by witnesses Nos. 1, 2 and 3, but there are no corroborative circumstances to sustain their evidence.

The prisoner's defence is as follows: Enaet Ally, native doctor, prisoner No. 1, in a written petition, says the case is got up against him by the jail people, that he did not get copies of the papers he required for his defence; that he is innocent of the charge made against him which he could show if the process were not too lengthy; that the prosecutor, by the counsel of advisers, has accused him of theft and got him committed to the sessions as having concealed stolen rupees in his box; that the money found in his box was received by him from the collectorate in payment of *hoondees*, in proof of which, he files attested copies of three entries in the collectorate English registers; that the rupees found in his box were not written upon, therefore, he does not see how the magistrate can have identified any of them. That, on consideration of the evidence of the prosecutor and witnesses, the nature of the case will be apparent; that it was got up through enmity and malice. "It should be considered that the prosecutor is a man on a salary of 4 rupees while I receive 25 rupees per mensem; besides which, I get money from my brothers from other zillahs. The money in my box was what I received from the collectorate with 99 rupees received from Damrooch, witness for the defence No. 2, the proceeds of a *hoondie* I sold him and the savings of my salary."

He says verbally that he is at enmity with the jail darogah on account of the assault on him (the darogah) by Man Khan prisoner, that at the time of finding the rupees or when the magistrate took Bhichook's evidence, he, Bhichook, did not name the person who had paid him the rupees identified by him in the sessions court. Gobind Singh, prisoner No. 2, says he always sleeps in the hospital and is a prisoner under charge of a guard. That on the night in question he dined about seven o'clock, after which he had a pain in his stomach, which he is very subject to. The sentry was watching within two paces of him he told him to call the doctor. He called to the sentry on the outside of the hospital ward wall who again called to the sentry at the outer jail gate and the doctor came, Meetunlall and Munnowur, witnesses Nos. 8 and 10, were in attendance on him, one with water and one with a light, the doctor told Meetun to put a plaster on his, Gobind's stomach, which Meetun did, the doctor gave him two pills, when he went to his bed and after remaining in pain two hours, felt easier and went to sleep; at six in the morning he got up, when Dussaeen, Munnowur, witnesses Nos. 8 and 10, told him that the store-room or *malkhana* in which were the prisoner's *lotas* and clothes, under his, Gobind's, charge, was broken open, he said that his *malkhana*

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door was not broken, when they said, Come and see; on which he said "Call the sentry to come with us and see," that he would not go alone. Then Dussaeen and sentry and the havildar with himself, went to see and found that the door previously broken, was broken in the lower corner, then the darogah and Bhichook, prosecutor, and jemadar of sessions came and said that none of the Government property was missing, two hours afterwards.

Bhichook, prosecutor, said that 500 rupees or 550 rupees of his was in a bag.

Girdharee, No. 3, says he dined with Gobind and others and then went to sleep soon after seven and knew nothing more of the matter.

The witnesses for the defence, Nos. 1 and 3, Gungaram and Choonee Sao, contractors for jail supplies, depose to prisoner, No. 1, having on the 29th November last received 175 rupees from the collectorate; that they were all new rupees fresh from the mint; that prisoner carried them with him towards the jail, knew Bhichook kept money in the jail *malkhana*, never saw that the prisoner did the same. No. 2, Ramrooch, bought a 101 rupee *hoondie* from prisoner for 99 rupees two or three months ago. No. 3, Choonee Sao, same as No. 1. The other witnesses examined for this prisoner depose to his being a respectable man and of considerable means.

Prisoner, No. 2, calls no witnesses, and those for prisoner No. 3, were not examined, the prosecution having failed to prove any thing against him.

The jury give in a verdict of acquittal. They do not consider the evidence of theft or receiving stolen property sufficiently credible, because what benefit could a prisoner derive from stealing money to give to another. Besides which, the eye-witnesses' evidence is contradictory, and the door being broken open without knowledge of the sentry on guard and without notice given to the higher authority is altogether surprising. It is stated by the darogah that the *malkhana* lock is fastened every evening and shown so fastened to the sentry, how did it happen then that when the sentry was changed every two hours, the broken door was not discovered by the first new sentry?

When the theft took place on the 2nd and the search and discovery of rupees was not made till the 4th, how was it that the rupees, if stolen, were not taken out and made away with beforehand?

The non-mention of the names written on the rupees by the prosecutor before the magistrate, and the after-mention of those names in the sessions court is full proof of the non-identification of the rupees, I altogether dissent from this verdict as regards prisoners Nos. 1 and 2, and on the following grounds, convict them of being accessories after the fact and prisoner No. 1, of receiving stolen property, knowing it to be stolen. With

regard to prisoner No. 3, I concur, and he is accordingly acquitted.

First, with reference to Enaet Ally, prisoner, written and verbal defence there is no proof whatever of there being enmity between him and any of the jail officials. The receipt of money by him from the collectorate is fully proved, but there is no link in his evidence to connect the rupees received for the *hoondees* with those found in his box, he was not seen by any one to take them into the jail or deposit them in his box, he was not ever seen by any one, except Wuzcer Ally (witness No. 19, for the defence,) to deposit money in that box. The collectorate rupees were *all* new fresh from the mint. He is a man of considerable means, landed and other property acquired by himself and four other relatives for whom he is the manager, on a joint-salary counting the legitimate gains of all five of 71 rupees per mensem (witnesses for defence Nos. 5 and 10,) the 99 rupees received from Ramrooch was paid to him several months ago and is not likely still to have formed a part of the loosely scattered money found in his box. The enmity ascribed to the jail darogah is not accounted for by saying it is owing to Man Khan's assault. The not naming of the persons whose names were written on the rupees by Bhichook was owing to the magistrate not allowing him to read the names, directly he was allowed to do so, he pointed out the persons and their evidence in the sessions court appeared to me altogether confirmatory of the truth of their own and Bhichook's story.

The reasoning of the jury on their verdict requires a few remarks.

That upon the likelihood of a prisoner stealing money to give away, is absurd. Gobind, if he actually broke open the door and stole the money, which is not proved, either anticipated his own share was sure of receiving it hereafter, the doctor's shop was merely used as a temporary hiding-place, not likely to be suspected. The evidence of the eye-witnesses is, in some measure, contradictory and can only be received where strongly corroborated by undoubted circumstances, but to reject it altogether would be wilful blindness to the strongest probabilities. The sentry must have been conniving, was soundly asleep as the generality of the other prisoners. The rotten door would have required little noise to force open. The lock alluded to by the darogah is the one facing the outer yard, there was no lock or fastening in the hospital yard, the door where broken open was fastened on the inside by a slight hook only which gave way when the door was loosened from the door post. The night was quite dark and the other sick men were, possibly enough, drugged by Gobind, who had access at all times to the *duwai khana*. The theft was not discovered till the 3rd, the

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circumstances were reported to the magistrate by 9 o'clock that morning, investigation was going on all that day by the nazir, but no clue to the whereabouts of the money was found till the magistrate went himself on the 4th. To take so large a sum out of a box, where it was scattered loose in so public a place as the *duwai khana*, while all were on the alert regarding the robbery, would have been dangerous on the extreme. It was the native doctor's own uneasiness that first attracted the nazir's attention and led to the clue afterwards obtained through Gobind and Imam Ally.

Taking all these circumstances into consideration, I feel quite satisfied of the guilt of Enaet Ally, prisoner No. 1, and convicting him of being accessary after the fact to burglary and theft of Rs. 358, and of receiving and concealing the same, knowing it to have been acquired by burglary and theft, sentence him to seven years' imprisonment with labor and irons in banishment to another district. I am also satisfied as to the guilt of Gobind prisoner, No. 2, and convicting him of being accessary after the fact to burglary and theft of 358 Rs. sentence him to seven years' imprisonment with labor and irons in banishment to another zillah from the date of his enlargement from the former sentence.

There is no sufficient proof of the exact sum stolen from prosecutor's box. I have not therefore thought fit to award any further fine under Act XVI. of 1850. The 358 Rs. found in the box of prisoner No. 1, will be restored to the prosecutor. The influence of prisoners Nos. 1 and 2, in the jail would be injurious to its discipline, I have therefore added banishment to their sentence.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court have perused the record of this case, and are unable to confirm the sentence, passed by the sessions judge, on the prisoners Enaet Ally, No. 1, and Gobind Singh, No. 2. The direct evidence of the witnesses Nos. 1, 2 and 3, is unworthy of credit, and the sessions judge has considered it to be such as regards the prisoner Gridharee Singh No. 3, whom he has acquitted. It is difficult, therefore, to admit it against the other prisoners. Irrespective of this evidence we have only the alleged fact of the identification by the prosecutor of the rupees, owing to the names of certain parties being written on them. The prosecutor states that he so marked them in order to secure himself from loss should the rupees turn out to be bad. In his report upon the trial the sessions judge considers that those rupees were seen by the magistrate when the latter found the money in the box of the prisoner Enaet Ally. He says: "The prosecutor, at the time of finding, was about to take these up and read them, saying he could thereby identify them as his stolen property; but the magis-

trate stopped him, asking if he could, without reading them, tell the names written on the rupees he had lost; this he could not do, and they were tied up with the rest without his having an opportunity of seeing them; and the subject, as regards those written-upon rupees not again mooted in the foudary examination." This information appears to be derived from the evidence of the prosecutor and witness No. 4, Kooldeep Suhay, darogah of the Meetapore jail, taken before the sessions judge, on 18th December, 1856. The magistrate, however, who counted part of the money himself on the afternoon of the fourth, and in whose presence the rest was counted by the jail darogah and Jowahir Awasty, Duffadar of Nujeebs' makes no mention of these written-upon rupees in his Memo. of 5th December, though they would undoubtedly have attracted his attention as a clue to the identification of the property; nor does he in any way allude to the prosecutor's identifying these rupees, and wishing to read the names, and being prevented so doing by himself. Had these rupees been brought so prominently to the magistrate's notice when he first counted them, and had the prosecutor been questioned regarding them, the magistrate would have made some allusion to this circumstance in his Memo. written the next day; and in his examination of the prisoner would have asked him how such written-upon-rupees had come into his possession. Further, though the prosecutor was examined by the nazir on the 3rd, and by the magistrate on the 5th, the day after the money was discovered in the box of the prisoner Euaet Ally, and that in the prosecutor's presence, and when the prosecutor was particularly asked by the magistrate, how he identified the money, he made no reference to the *written-upon-rupees*, but claimed the money, as his own, *because it was scattered about the box*. The jail darogah also who was examined by the magistrate on that same 5th December, and also on the 11th idem, says nothing of the written-upon-rupees, or of the prosecutor wishing to read the names; and the same darogah in his examination before the sessions judge, on the 18th December, admits that he did not do so, because it all occurred in the magistrate's presence. Had the money, as soon as counted, been sealed up, and kept by the magistrate, the fact of the three written-upon-rupees would have been good *primâ facie* proof against the prisoners, and it might have been inferred that the other rupees found with them, were part of the stolen property; but as the money immediately left the magistrate's hands, and was handed over to subordinate police officers, and the written-upon-rupees were not noticed by the magistrate when the money discovered in the prisoner's box was counted in his presence, and the circumstance was not alluded to by the prosecutor when asked to identify the property, there is no security that there was no opportunity for collusion before the

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case was committed for trial. Further the reason assigned by the prosecutor for marking these rupees is open to great suspicion. He says that he did it to secure himself from loss, should the rupees turn out to be bad. Now it is not shewn that the rupees were bad or even short weight; and it is very unlikely that a person, having such varied and extensive money-dealings as the prosecutor professes to have, should be unable to detect a bad rupee, particularly when paid singly as these are said to have been; or that, having doubts as to the goodness of the coin, he should have retained it instead of giving it back. It may be remarked further that of the property stolen, consisting of Rs. 550 in cash and ornaments, only Rs. 358 were found in the box of the prisoner Enaet Ally. If the robbers were able to carry off Rs. 192, and the ornaments, there could have been no difficulty in carrying off the remainder; and it is unlikely that the prisoner No. 1, should not have taken measures to secure his share of the plunder in a safer place than the hospital, which would undoubtedly be the first place searched. We consider that the prisoner has also accounted for the money in his possession. We direct the prisoners to be released.

## PRESENT:

B. J. COLVIN, Esq. *Judge*, AND  
G. LOCH, Esq., *Officiating Judge*.

24-Pergun-  
nahs.

## GOVERNMENT

1857.

*versus*

March 31.

Case of  
BABOO  
SHEIKH, &c.

BEHAREE KAHAR (No. 1,) BABOO SHEIKH ALIAS MEAH JAN (No. 2, APPELLANT), MADARUN FUKKEER ALIAS MADARBUX HAKIM (No. 3, APPELLANT,) AND ROOKEEAH ALIAS ROOKMANEE (No. 4.)

The appeal of one prisoner was rejected. Another prisoner was acquitted, there not being proof of guilty knowledge on his part of how the property found on him had been acquired.

CRIME CHARGED.—1st count, theft of cash, gold and silver ornaments to the amount of Rs. 26,482-8-0 and a Government promissory note No. 33,204, of the 4 per cent loan of 1854-55, for Company's Rupees 100,000 belonging to and standing in the name of Ruksh Muhal, daughter of Punjabun Beebee; 2nd count, privy to the said theft; 3rd count, receiving stolen property obtained in the said theft well-knowing that it had been so obtained.

CRIME ESTABLISHED.—No. 1, being an accomplice in the theft charged, and knowingly having stolen property in his possession; Nos. 2, 3 and 4, privy, and the latter crime.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 26th September, 1856.

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*Remarks by the additional sessions judge.*—All the jewellery, &c. made away with in this case, belonged to Nawabee Ruksh Muhal, a wife of the Ex-king of Oude, and was in the keeping of her mother Beebee Punjabun, witness No. 26: but it is not to be distinctly gathered from the evidence what, beyond that portion of it which has been recovered, it really consisted of. Koshon, a servant of Beebee Punjabun's, on the 25th June last, was at his mistress's garden-house, where he brought several friends and amongst them the first two prisoners to sit and gamble with him. These friends were seen to examine the premises rather suspiciously during their visit and did not leave the place till late at night. Towards morning a noise was heard all over the house by the old lady, but she did not suspect any thing had occurred till the following morning, when she found her boxes had been left empty in her garden and their valuable contents carried off.

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BABOO  
ШЕИКИ, &c.

Through the information of Muthoor Khetree, witness No. 34, the offence was eventually traced to the prisoners who all confessed to the magistrate; No. 1, that he had accompanied the gang of thieves and got a part of the stolen property; No. 2, that prisoners Nos. 1 and 3, had shewn him a portion of the proceeds of the robbery, and with his knowledge and permission placed it in the keeping of a lodger of his (prisoner's) by name Ruchoo Bunnia: Ruchoo Bunnia prisoner added, transferred the plunder to one Neela Kahar (witness No. 21,) who with the third prisoner ultimately gave prisoner (to keep for him) two of the stolen articles which the fourth prisoner, his mistress, received for him. No. 3, prisoner distinctly confessed to having a portion of the stolen property in his possession, knowing it to be such; while prisoner No. 4, admitted she had received another portion of it from her lover, the second prisoner, and a friend of his Nuboo "*who were the thieves,*" to conceal for them.

Witness No. 18, (who is not the first prisoner's wife, but a common prostitute) identifies certain of the recovered stolen jewellery as having been given her by the first prisoner to take care of for him and which the said prisoner, in the presence of the police, asked her for and made over to them. Witness No. 19, saw part of the identified stolen property given up to the police by the fourth prisoner, which she (the prisoner) had left in her house in a bundle which witness had not seen, the contents of No. 21 testifies to having received one article of the stolen jewellery which has been recovered from prisoner No. 2's servant *in pledge*, and witnesses Nos. 24 and 25, saw some of the recovered articles fall from third prisoner's clothes when he was searched.

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BABOO  
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Witness No. 23, knows the first two prisoners well as rogues and vagabonds, and all the male prisoners are clearly shewn to be gamblers by profession living on their wits and on the credulity of the public. The female prisoner is their fitting associate. Prisoner No. 1, has been up before for theft; and prisoner No. 2, in jail for the same crime. No. 3, is a person of the lowest and loosest character; and not one but substantiates his bad character by his defence.

I sentence the first prisoner for complicity in the theft and for knowingly having stolen property in his possession to five years' imprisonment with labor and irons; prisoners Nos. 2 and 3, to the same punishment for privity to theft and knowingly having stolen property in their possession; and prisoner No. 4, to three years' imprisonment with labor suited to her sex for the same charges. The law officer concurs.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. B. J. Colvin and G. Loch.) Prisoners Nos. 2 and 3, have appealed.

We see no reason to interfere with the conviction of prisoner No. 2. His confession is a clear acknowledgment of guilt. We do not, however, concur with the sessions judge in considering, that prisoner No. 3, "distinctly confessed to having possession of the stolen property knowing it to be such." The prisoner admitted only, that he first thought it to be the proceeds of gambling, but afterwards knew it was stolen. But when this subsequent knowledge was gained, does not appear. It is fair to infer that it was when the police inquiry took place. As there is nothing against this prisoner, except his confession, we direct his release; and reject the appeal of No. 2.

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PRESENT :

B. J. COLVIN, Esq., Judge.

GOVERNMENT AND SONATON MAHAPUTTEE

*versus*

GOBIND SAHOO (No. 1,) AND RUGHOO SAHOO (No. 2.)

Cuttack.

CRIME CHARGED.—1st count, burglary and theft, value of property rupees 309 ; 2nd count, receiving the above, knowing the same to have been stolen.

1857.

March 31.

CRIME ESTABLISHED.—Privity to the fact and of knowingly receiving property acquired by burglary.

Case of  
GOVIND  
SAHOO  
and another.

Committing Officer.—Mr. W. Brown, deputy magistrate of Bhuddruck.

Tried before Mr. J. Ward, sessions judge of Cuttack, on the 25th November, 1856.

Appeal re-  
jected; evi-  
dence for the  
prosecution  
being suffi-  
cient.

*Remarks by the sessions judge.*—The prosecutor, a dealer in coins, had lived for some time with the defendants Nos. 1 and 2, father and son. He wished to return home but was persuaded by the prisoners to stay one day longer with them. On that evening, Nunda Podar a suspicious character was heard to ask, Shall it be to-day ? Prosecutor tied with a string the latch of the door of the room where his money and gold coins, valued at 309 rupees, were kept and went to the cook-house ; after a time he returned and saw the string untied and a hole made in the wall through which a man could pass, and the purse containing the money stolen. On three sides of the house was a strong thorn fence so that suspicion rested on its inmates. No notice was given to the police for four days, but the zemindar was about to give notice at the thannah on the day after the theft when defendant No. 1, said, Wait a little and the money will be returned. The chowkeedars allowed him to go free on bail and he was seen at the house of Nunda Podar, from whence he went to his own house and on the chowkeedar there searching him he gave up 83 rupees, saying that it formed part of the stolen property. His son Rughoo defendant No. 2, asked to be taken to Nunda Podar's house saying 4 annas was due to him, but on returning from thence he gave up 19 rupees saying it had been stolen from prosecutor. The two defendants showed by their confessions at the thannah and before the deputy magistrate, that they were privy to the theft and that the money found on them was part of the stolen property. The deputy magistrate took the defence of Nunda Podar, but I can find no order in regard to his acquittal or punishment among the papers of this case, and have called for an explanation as to whether he has been acquitted or is still under trial.

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Case of  
GOVIND  
SAHOO  
and another.

The law officer considers the crime of privity to the fact and of knowingly receiving property acquired by burglary to be proved against both the defendants; agreeing in this, I sentence the defendants Nos. 1 and 2, to three years' imprisonment and one year more in place of stripes, in all four (4) years each with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. B. J. Colvin.) The prisoners have not been able to invalidate the evidence for the prosecution. I therefore reject their appeal.

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## SUMMARY CASES,

FOR FEBRUARY AND MARCH.

*Note.—The Cases for February were accidentally omitted from the number for that Month.*



SUMMARY CASES,

FOR FEBRUARY AND MARCH.

Note.—*The Cases for February were accidentally omitted from the number for that Month.*

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND MR. T. HEQUET

*versus*

SHEIKH DHUNNOO (No. 1,) SHEIKH KALOO (No. 2,) AND SHEIKH MUNNEERUDDEEN (No. 3.)

Dacca.

1857.

CRIME CHARGED.—1st count, violent assault and robbing prosecutor of a gold watch and chain valued at 400 Rs.; 2nd count, violent assault.

February 12.

CRIME ESTABLISHED.—Violent assault accompanied with the robbery of a gold watch and chain belonging to the prosecutor.

Case of  
SHEIKH  
DHUNNOO  
and others.

Committing Officer.—Mr. C. Jenkins, officiating magistrate of Dacca.

Sentence of  
sessions judge  
annulled as  
illegal; as mag-  
istrate had  
power by law,  
to judge whe-  
ther to pun-  
ish himself or  
commit.

Tried before Mr. R. Scott, officiating sessions judge of Dacca, on the 21st October, 1856.

*Remarks by the officiating sessions judge.*—The prisoners were convicted by the officiating magistrate of violent assault with the plunder of a gold watch and chain from the person of the prosecutor, they were punished by imprisonment and fine, and the value of the watch and chain, four hundred rupees, was ordered to be realised from them under Act XVI. of 1850.

They appealed from this sentence and the conviction was quashed as illegal.

The officiating magistrate then committed them to stand trial on the above charges before this court.

The prosecutor, Mr. Hequet, is a colonial Frenchman. His deposition is clear and straight-forward, he swears most positively that the prisoners under trial and one not apprehended assaulted and maltreated him in the most brutal manner. His deposition is substantially corroborated by the evidence of Munneruddeen No. 1, and the witnesses Nos. 2 to 6.

It appears that the village of Tatoosree is at feud with the factory, of which Mr. Hequet is manager, about a *hat*. On the 7th of June Mr. Hequet found the cattle of that village destroying his indigo. He appears to have acted with command of temper sending only one man to turn out the cattle. The villagers assembled and abused that man, on which Mr. Hequet came forward to expostulate. He was alone and they could have dreaded no violence from him. Four men came



1857.

February 12.

Case of  
**SHEIKH**  
**DHUNNOO**  
 and others.

out from the mob, beat him in the most merciless way, tore his clothes and when he was senseless, rifled his person of a gold watch and chain.

The civil surgeon deposes that Mr. Hequet was about a fortnight under medical treatment, that he was spitting blood owing to the rupture of blood-vessels in the lungs arising from pressure on the chest or from severe blows. This deposition tallies with the account given by the prosecutor of the treatment to which he had been subjected.

The prisoners deny the charge but their defence is worthless.

The law officer finds the prisoners guilty on the 1st count, in which finding I concur and sentence them each to five (5) years' imprisonment with labor and irons and a fine of four hundred (400) rupees to be levied under provisions of Act XVI. of 1850.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 109 dated the 12th February, 1857.

The Court, having duly considered the proceedings held on the trial of Sheikh Dhunnoo, and others, observe that the magistrate convicted the prisoners Sheikh Dhunnoo, Sheikh Kaloo and Sheikh Munneeruddeen, of assault and plundering property to the value of 400 rupees, and sentenced them to various terms of imprisonment and fines, or further imprisonment: also to fines in lieu of labor, and to a fine under Act XVI. of 1850. The prisoners appealed from this order; and on that appeal the sessions judge, by his proceeding of the 24th September, reversed the magistrate's order, on the ground that the case was one of aggravated assault and plunder, and that the magistrate was not competent to dispose of it finally; and he directed the magistrate to pass a *proper* order. The case was then committed. On this commitment the sessions judge sentenced the prisoners, as recorded in the statement above referred to. They have appealed to this Court.

*In limine*, and without giving any opinion that the sessions judge's sentence was too severe, the Court are compelled to annul it as illegal. The magistrate has the power by law to pass the sentence he did, in cases of assault and plunder. He has the power also to *judge* whether this case was of that nature that he should dispose of it himself, or refer it to a higher tribunal. In the exercise of that power he adopted the former course; and without at all intending to signify by this judgment that he did right, the Court hold that the sessions judge had not the power, under the intent and terms of Act XXXI. of 1841, to pass the orders causing an enhancement of punishment in a case, which, by law, the magistrate had the power finally to dispose of. The sessions judge's sentence is therefore annulled. The magistrate will dispose of the case with reference to the above remarks. The purport of this judgment is to be carefully explained to the prisoners.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

AMEENOOLLAH.

Tipperah.

1857.

CRIME CHARGED.—1st count, forgery by altering the date of an order of the principal sudder ameen of this district, Baboo Dwarkanath Roy, passed on an *urze* of the nazir of his court on the 9th February, 1856, in an execution of decree case, Sib Chunder Soom Sirburakar *versus* Ramnarain Shaha, after the said order had been signed by the principal sudder ameen, defendant being at the time employed as a mohurrir in the office of the principal sudder ameen aforesaid; 2nd count, fraud in endeavouring by altering the date of the order as aforesaid to conceal from the principal sudder ameen the neglect of which he had been guilty as a mohurrir in the office in charge of the execution of decree cases.

February 19.

Case of  
AMEENOOL-  
LAH.

Sentence by sessions judge annulled; as no law existed making the offence charged a criminal one, punishable by order of the Company's Courts.

Committing Officer.—Mr. A. Abercrombie, magistrate of Tipperah.

Tried before Mr. R. H. Russell, officiating sessions judge of Tipperah, on the 26th May, 1856.

The following letter No. 167, dated the 26th May, 1856, was submitted by the sessions judge.

On the 9th February, 1856, it appears that the principal sudder ameen passed an order on the back of an *urzee* filed by the nazir of his court, directing the issue of notice of sale in the case mentioned in the 1st count. This was signed at the time and registered on the same day by witness No. 137, Mirza Pandey Allee. The paper was then made over to the prisoner. Subsequently the prisoner was suspended in consequence of some alterations discovered in the date of another case, and Bulloram Sein, witness No. 136, was directed to take charge from him of the papers under his care. On the 19th March this witness discovered that the date of the order in question had been altered to the 12th March, and on looking at the registry book, and finding that the original date was the 9th February, he reported the circumstance to the principal sudder ameen. The prisoner was put on his defence and admitted that he had altered the date through fear of the displeasure of the principal sudder ameen on account of his neglect in carrying out the orders. His admission is established by the evidence of witnesses\*

Nos. 134, 135, 136 and 138.

\* No. 134, Essanchunder Goopto.

„ 135, Juggutehunder Goopto.

The attesting witnesses to the defence before the princi-

1857. No. 136, Bulloram Sein. pal sudder ameen, appear not  
 „ 138, Ruhimzan. to have verified it, and were  
 February 19. not therefore sent in by the magistrate, but they were not called by the prisoner, and I see no reason whatever to doubt that the admission made was voluntary.

Case of  
 AMEENOO-  
 LAH.

The prisoner now states that he was not in his senses at the time the defence was taken, and does not know what was written. One of his witnesses, a relation, supports his defence in this respect, but I place no reliance upon his testimony.

It appears from the evidence of Bulloram Sein, witness No.

No. 136, Bulloram Sein. 136, that the prisoner made over to him a bundle containing a *roo-*

*bakaree*, sale notices, *perwannah* on the nazir and interest account, all dated the 12th March the substituted date, bearing prisoner's signature at the foot, but not that of the principal sudder ameen. These are with the record, but the magistrate has omitted to enter them in the calendar. This fact taken with others affords a clear presumption that the prisoner, and no other, was the party by whom the alteration was made, moreover he was the only party who could be benefited by the alteration, for no one else could have been held answerable for the neglect in carrying out the order.

The evidence leaves no doubt on my mind of the prisoner's guilt. And the assessors, Mahomed Wallee, sudder moonsiff and Ramdoollal Deb, vakeel of this court, who were associated with me in the trial, were likewise satisfied of the facts of the alteration having been made by the prisoner. The first, however, considers that no fraudulent intention had been proved, and is therefore for acquitting the prisoner on both counts, the second would convict on the second count only.

The prisoner cannot claim an acquittal on the ground that no party has been prejudiced by the prisoner's deed. But it is not necessary that any prejudice should in fact have happened to any body, any alteration of a document with intent to defraud or deceive is forgery. In this case it is clear that the intent was to deceive the principal sudder ameen in the hope that the fault committed by the prisoner should not be discovered. Clause 3, Section 4, Regulation II. 1807 defines the term forgery to include all fraudulent and injurious fabrications or alterations of written deeds, or of written papers of whatever description. Though the alteration in question is not an injurious, it is doubtless a fraudulent one; committed with intent to deceive. A somewhat similar case is reported in volume II of the Nizamut reports, in which a thannah mohurrir, who had, with a view of screening himself from blame, for deputing a burkundaz to investigate a case of theft, falsified the thannah diary with a view to show that the jemadar was not at the thannah on the day in question, this was held to be a forgery

and the mohurrir convicted accordingly. In this case it does not appear that the falsification of the book was prejudicial to any party, I therefore convict the prisoner of forgery, and in accordance with Section 9, Regulation XVII. 1817 sentence him to imprisonment for three years, but with reference to the circumstances, would recommend a mitigation of the sentence to the extent awarded in the above cited case. A sentence of six months' imprisonment would, I consider, be a sufficient punishment for the offence of which the prisoner has been found guilty.

With reference to the above letter the following resolution, No. 686, dated 6th August, 1856, was recorded by the Court. — (Present : Messrs. B. J. Colvin and J. H. Patton.)

The law, Clause 3, Section 4, Regulation II. of 1807, enacts that forgery must be fraudulent *and* injurious. In this case the sessions judge records that the alteration of the date is not injurious. The Court are of this opinion also, as no one can be injuriously affected by it. The prisoner made it only to screen himself. They therefore cannot sentence him for forgery. The sessions judge has given no opinion upon the second count relative to fraud. The Court therefore return the proceedings that he may dispose of it according to his judgment.

In reply to the above Resolution the following letter, No. 364, dated 24th November, 1856, was submitted by the sessions judge.

The prisoner was tried by my predecessor, Mr. R. H. Russell, on the 26th May last, and convicted on the 1st count of the indictment. With reference, however, to the circumstances of the case, the officiating sessions judge, while passing a sentence of three years' imprisonment on the prisoner, recommended to the sudder court a mitigation expressing his opinion that six months' imprisonment would be a sufficient punishment for the offence the prisoner had committed.

The sudder court recorded a resolution on the reference thus made, to the following effect.

"The law, Clause 3, Section 4, Regulation II. of 1807, enacts that forgery must be fraudulent *and* injurious. In this case the sessions judge records that the alterations of the date is not injurious. The Court are of this opinion also, as no one can be injuriously affected by it. The prisoner made it only to screen himself. They therefore cannot sentence him for forgery. The sessions judge has given no opinion upon the second count relative to fraud. The Court therefore return the proceedings that he may dispose of it according to his judgment."

In obedience to the above orders, I, on the 25th August last, resumed consideration of the case in the presence of all the parties concerned therein.

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The following was the officiating judge's statement of the case.

"On the 9th February, 1856, it appears that the principal sudder ameen passed an order on the back of an *urzee* filed by the nazir of his court, directing the issue of notice of sale in the case mentioned in the 1st count. This was signed at the time and registered on the same day by witness No. 137 Mir-zah Pandey Allee. The paper was then made over to the prisoner, subsequently the prisoner was suspended in consequence of some alterations discovered in the date of another case, and Bulloram Sein, witness No. 136, was directed to take charge from him of the papers under his care. On the 19th March this witness discovered that the date of the order in question had been altered to the

No. 134, Essanchuader Goopto.

" 135, Juggutehunder Goopto.

" 136, Bulloram Sein.

138, Ruheemzaun.

12th March, and on looking at the registry book, and finding that the original date was the 9th February, he reported the circumstance to the principal sudder ameen. The prisoner was put on his defence and admitted that he had altered the date through fear of the displeasure of the principal sudder ameen on account of his neglect in carrying out the orders. His admission is established by the evidence of witnesses Nos. 134, 135, 136, and 138. The attesting witnesses to the defence before the principal sudder ameen appears not to have verified it, and were not therefore sent in by the magistrate, but they were not called by the prisoner, and I see no reason whatever to doubt that the admission made was voluntary."

"The prisoner now states that he was not in his senses at the time the defence was taken, and does not know what was written. One of his witnesses, a relation, supports his defence in this respect, but I place no reliance upon his testimony."

"It appears from the evidence of Bulloram Sein, witness No.

No. 136, Bulloram Sein.

136, that the prisoner made over to him a bundle containing a *roobakaree*, sale notices, *perwannah* on the nazir and interest account, all dated the 12th March, the substituted date, bearing prisoner's signature at the foot, but not that of the principal sudder ameen. These are with the record, but the magistrate has omitted to enter them in the calendar. This fact taken with others affords a clear presumption that the prisoner, and no other, was the party by whom the alteration was made, moreover he was the only party who could be benefited by the alteration, for no one else could have been held answerable for the neglect in carrying out the order."

The assessors who assisted Mr. Russell disagreed in their verdicts, Moonshee Mahomed Wallee, the sudder moonsiff, acquitted the prisoner of all fraudulent intention, and Ramdool-

lal Deb, a vakeel of the civil court, convicted him on the second count only.

There can be no doubt whatever, that the prisoner altered the date from the 9th of February to the 12th of March, in order to conceal from his superior, the principal sudder ameen, his neglect in carrying out the order, which bore the earlier date. There was no intention to injure or prejudice any one, nor indeed could any one be prejudiced by the alteration. But the prisoner to screen himself was guilty of a very dangerous offence, which if allowed to escape altogether unpunished, would open the door to other and more serious offences of the same nature. If a judge's orders are liable to be tampered with and altered with impunity by his amlah, great mischief may ensue, and as it is clear that the prisoner, while in an office of trust, did, to screen himself from the consequences of previous neglect of his duty, alter the date of an order passed by his superior, I am of opinion that he should be convicted on the second count of the indictment, although entitled to acquittal on the first.

He has of course lost his appointment, and it is not likely that he will readily obtain re-employment, at least in any Government office or court. This considered, I am of opinion that three months' imprisonment without labor or irons from the date of my predecessor's order exclusive of the five days on which he has been at large on bail, will suffice as a punishment for himself, and a warning to others, and beg to recommend that a sentence to that effect may be passed.

The Court, upon the above, recorded the following *Resolution* No. 73, dated 2nd February, 1857.—(Present: Messrs. G. Loch and H. V. Bayley.)

The Court observe that it is not stated by the sessions judge whether this reference is made under Regulation VI. of 1832, or on what ground. The sentence on the 2nd charge is one which the sessions judge was competent to pass, and the case had been sent to him to dispose of on that charge. If the sessions judge is of opinion that the case should be referred to this Court under Regulation VI. of 1832, he should state that specifically, and the reasons for his opinion and reference. If he does not think this, he should consider the case finally disposed of. It does not, the Court remark, clearly appear whether the sentence on the 2nd charge is based upon a fresh trial, or upon the original record as remanded by the Nizamut Adawlut.

In reply to the above, the following *letter* No. 47, dated 7th February, 1857, was submitted by the sessions judge.

I have the honor to acknowledge the receipt of the Court's resolution, No. 73, dated the 2nd instant relative to my letter, No. 364, under date the 24th of November, referring the case of Ameenoollah, charged with forgery on the first count and

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fraud on the second, and beg in explanation of the uncertainty expressed by the Court as to the cause of the reference, to refer them to your letter No. 939, dated the 31st October last, a copy of which is annexed, in which I was expressly desired to make it for the reasons therein stated.

From the officiating register of the Nizamut Adawlut to the sessions judge of Tipperah, No. 939, dated 31st October, 1856.

The Court, having had before them your letter No. 303, of the 10th ultimo, submitting the statements as per margin\*

|                                                             |             |
|-------------------------------------------------------------|-------------|
| Nos. 1, 4 and 5, statement of persons brought to trial, &c. | connected   |
| „ 6, statement of prisoners punished.                       | with the    |
| „ 8, statement of prisoners acquitted.                      | sessions of |
| „ 10, calendar of trials postponed.                         | jail deli-  |
| <i>Futwas</i> of the law officer, verdict of assessors.     | very held   |
|                                                             | by you in   |

the month of August last, and advertng to the case of Ameenoolah No. 14, of statement No. 6, observe that as the crime of which the prisoners has been found guilty, is not one specifically provided for by the Regulations, and it does not appear that you called for a *futwa* on the trial, you should not have proceeded to pass sentence, but have referred the case to this court under Section 4, Regulation VI. of 1832. The Court request that you will do so, admitting the prisoner to trial.

With reference to the above the following *Resolution* No. 132, dated the 19th February, 1857, was recorded by the Court.—(Present: Messrs. G. Loch and H. V. Bayley.)

The Court observe that this reference has been made under Section 4, Act VI. of 1832, agreeably to the orders of the Judge in the English department No. 939, dated the 31st October last, issued on a review of the monthly criminal statements.

The Court consider that the alteration of a date by the prisoner, not for the purpose of defrauding or injuring any one, and where such results were impracticable, but only to save himself from the chance of, being punished for neglect of duty by his superior, is not a criminal offence punishable by any of the laws of criminal justice of the Company's Courts.

If expedient that such offences should be made punishable by law, still it is obvious that they cannot be legally punished while no law exists under which they can be so.

The Court annul the sentence of three months' imprisonment without labor and irons, which was passed by the sessions judge upon the prisoner Ameenoolah on the 25th of May last.

PRESENT :

G: LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND HURGOBIND PULLEE

*versus*

MOOTEEOOLLA ALIAS MOTEEBOOLLA (No. 17,) LUCKHIA (No. 20,) AND NOIMOOLLAH ALIAS NEMOOLLAH NUSHO (No. 21.)

Dinagapore.

CRIME CHARGED.—1st count, stealing cattle belonging to Hurgobind, plaintiff's master, valued at rupees 70; 2nd count, No. 17, having possession of stolen cattle, knowing them to be such, and Nos. 20 and 21, accessories before and after the fact.

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CRIME ESTABLISHED.—No. 17, having possession of stolen cattle, knowing them to be such, and Nos. 20 and 21, cattle-stealing.

Case of  
MOTEEOOLLA  
alias MOTEE-  
BOOLLA.  
and others.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagapore.

Tried before Mr. J. Grant, sessions judge of Dinagapore, on the 21st June, 1856.

Sentence an-  
nulled as ille-  
gal; there be-  
ing no special  
or specified  
circumstances  
of aggrava-  
tion.

*Remarks by the sessions judge.*—The prosecutor's cattle were stolen on the night of the 14th of January, 1856, and were found in the house of the prisoner No. 17, Moteeoola on the 25th of January. In the foudary, he said that he purchased the cattle from the prisoner No. 20 "Lukhia" and another "Chandoo" released before me, said, he purchased from the witness No. 1 Asho and Formoola. The prisoners No. 20 Lukhia and No. 21 Noimoolla confessed in the foudary and before me pleaded that they were threatened into doing so. I concurred with the *futua* of the law officer in convicting the prisoners.

*Sentence passed by the lower court.*—Each to be imprisoned with labor and irons. No. 17 for five (5) years and Nos. 20 and 21 each for three years.

With reference to the above, the following resolution No. 133, dated 19th February, 1857, was recorded by the Court.—(Present: Messrs. G. Lock and H. V. Bayley.)

The Court observe that the appeal of the prisoner Moteeoola *alias* Moteeboolla, is on no special grounds, but merely prays for a reference to the record. The Court have made that reference, and consider the conviction correct: and therefore reject the appeal.

In the last paragraph of the magistrate's reasons for commitment entered in the Calendar, it is said that the prisoner Moteeoola *alias* Moteeboolla was committed to the sessions, because



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Case of  
MOTEEBOOLLA  
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he was concerned in this case of cattle theft *with other defendants*, who are implicated in other cases of robbery for which they *will be* committed. As the commitment of this prisoner, who apparently is implicated only in one offence, punishable by the magistrate, and for which a specific sentence is prescribed by law, was rendered necessary by the commitment of his accomplices, the Sessions Judge, with reference to Circular Order, No. 234, of the 30th October, 1846, is directed to state his reasons for having awarded a more severe punishment than prescribed by Clause 4, Section 3, Regulation XII. of 1818.

In reply to the above Resolution the following letter No. 42, dated the 28th February, 1857, was submitted by the Sessions Judge.

With reference to Resolution No. 133, of the 19th instant, I have the honor to state that from the value of the bullocks stolen, the manner in which they were stolen and found, the nature of the defence, and the connection of the prisoner with his brother "Dianutoolla," who volunteered information regarding numerous robberies, Ashuk and Nuzecra, admitted as approvers, and subsequently committed and punished, and others belonging to a gang, several of whom were subsequently convicted of the said robberies, which were traced from the clue obtained in the cattle-theft case, it appeared to me that the prisoner was a professional receiver of stolen property, and a person of very bad character, and that under the circumstances, the sentence of 5 years' imprisonment was not too severe.

With reference to the above, the following Resolution No. 189, dated the 6th March, 1857 was recorded by the Court.—(Present: Messrs. G. Loch and H. V. Bayley.)

The Court observe that as the prisoner Moteeoolla *alias* Moteeboolla was committed to the sessions only because the committal of his accomplices rendered his committal necessary, and *not* because he was himself of *notorious bad character*, or under any special or specified circumstances of aggravation, the Sessions Judge's order sentencing the prisoner to five years' imprisonment is illegal. The Court therefore direct that he will pass an order in conformity with the provisions of Clause 4, Section 3, Regulation XII. of 1818.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

CAUREE SAHOO (No. 1.) SOMAIE (No. 2.) AND URJUN Bhaugulpore.  
(No. 3.)

CRIME CHARGED.—No. 1, perjury in having on the 21st February, 1856 deposed under a solemn declaration taken instead of an oath before the deputy magistrate of Muddehpoorah that the syce of Mr. Blandford, who set fire to his house was a full grown man of middling size with a short beard who having a turban on, he could not say whether or not he (the syce) had any hair on his head. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; No. 2, perjury in having on the 21st February, 1856, deposed under a solemn declaration taken instead of an oath, before the deputy magistrate of Muddehpoorah, that the said Mr. Blandford's syce was a tall grown up man, with a long beard and head closely shaved; such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 3, perjury in having on the 21st February, 1856, deposed under a solemn declaration taken instead of an oath, before the deputy magistrate of Muddehpoorah that the syce was short in stature and a lad without any beard and wore short hairs on his head, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Syed Zynooddeen Hossein, deputy magistrate of Muddehpoorah.

Tried before Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore on the 19th November, 1856.

*Remarks by the officiating sessions judge.*—The prisoners pleaded *not guilty*.

The circumstances which gave rise to the commitment of the prisoners are briefly these, prisoner No. 1 on the 1st February last lodged a complaint before the Muddehpoorah deputy magistrate's court representing that about 10 A. M. on the 26th Pous 1262, Mr. Blandford, the agent of the Simiahee factory rode towards his grog-shop, with his syce, and directed him to remove it from the spot where he had erected it, this he declined to do, Mr. Blandford, then ordered four bhanga wallas to beat him, and his syce to set fire to his shop. To substantiate

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Case of  
CAUREE  
SAHOO  
and others.

Perjury in contradictory statements; how not penal in this case. Sentence annulled; there being no legal perjury in the charge on which commitment was made, and conviction had.

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Case of  
CAUREE  
SAHOO  
and others.

the charge two witnesses (prisoners Nos. 2 and 3,) were produced, and on examination relative to the attendance of the syce with Mr. Blandford, all their depositions were so conflicting and contradictory it was manifest, that the charge was not only false and fabricated, as proved by the enquiries made in the arson case but that Mr. Blandford had no syce with him when he rode out to see his cultivation, it was therefore quite impossible the syce could set fire to the shop; the prisoners were therefore committed to stand their trial for perjury. On the first day's trial witnesses Nos. 3, 4, 5, 6, and 7. Mr. Blandford attended and deposed to the circumstances above detailed, prisoners Nos. 2 and 3, to make matters more complicated and aggravated, stated, that their names were, the former, Sukun son of Dukah, caste Koormce, resident of Mouzah Kotee Pundowl, zillah, Tirhoot and the latter, Hurlal, son of Deawon, a resident of mouzah Bouncepore, pergunnah Hurrant, zillah Purneah, and not those recorded in the calendar. The trial was postponed, the absent witnesses summoned, and the deputy magistrate directed to make enquiries, whether the prisoner's representations were correct. On the 16th September, witness No. 2. Acting Meer Moonshee appeared, and swore to the identification of the prisoners, he wrote their depositions in the arson case, and they stated their names to be those specified in the calendar, and is aware that witness No. 1, administered the oath to them in the deputy magistrate's presence, and considers, that the prisoners have falsely personated themselves in the hope of securing their acquittal. On the 1st November, witness No. 1, attended and recognized the prisoners, as the persons to whom he administered the oath, in the deputy magistrate's court. A proceeding was received on the 31st October, 1856, intimating that a local enquiry had been instituted and amongst the names referred to, only one, Hurlal, was ascertained to have resided at mouzah Phagookote, and no trace of the other person could be discovered, but the deputy magistrate, instead of sending the parties to depose to these facts, merely transmitted the police report. He was ordered on the 1st November, 1856, to cause the attendance of these witnesses, they appeared on the 19th November, when the trial was resumed. They recognized Hurlal (prisoner No. 3,) and swear, that he has resided in their village for a year, he has always been called by that name and has no *alias* affixed to it, they cannot depose in the other prisoner's behalf, being unacquainted with him. The prisoner No. 1, in his defence denies having committed perjury, and maintains, that Mr. Blandford set fire to his shop. Prisoner No. 2, pleads that he resides five *cos*s from prisoner No. 1's house, near Muzzufferpore, he went to bathe in the river Kossee, and on returning home, his wife's foot became swollen they alighted at a village, where he met prisoner No. 1, who

enquired of him where he was going, he mentioned his pilgrimage trip, he then recorded his name as a witness at the thannah, but he states, he did not give evidence either before the police or deputy magistrate.

No. 3, prisoner pleads that his name is Hurlal not Urjun, he was returning home from mouzah Dewangunge, when he met prisoner No. 1, and Sukun (prisoner No. 2,) in company with a burkundaz, No. 1 told him he was one of his witnesses, he was taken to the thannah but did not depose before the deputy magistrate.

As the prisoners had no witnesses who could depose in their behalf, the jury returned a verdict of guilty against all of them in which I concurred, and as so many cases of perjury have recently come before this court, and the witnesses have most fearlessly and deliberately perjured themselves, the sentence was increased beyond that usually passed in such cases, in the hope of deterring others from committing similar offences.

*Sentence passed by the lower court.*—Each to five years' imprisonment with labor and irons.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 352, dated 31st March, 1857.

The Court observe that the specification of the crime charged (as stated in detail in the above statement) appears to indicate that the perjury consists in *different description* being given by different witnesses of the personal appearance of a *certain syce*. But such are not the contradictory statements which by the law of the Company's courts constitute perjury; nor will the different descriptions given by different witnesses be in this case more than points affecting credibility of evidence. It would appear from the record, and (as far as the Court can learn) from the judge's remarks, that the commitment and conviction contemplated a finding of the perjury, on the ground, that the prisoners had falsely deposed to a certain syce having accompanied Mr. Blandford, and to have set fire, by Mr. Blandford's orders, to complainant's house, when it is alleged that *in truth no syce at all accompanied him*. If so, the charge, commitment and conviction should have been made accordingly. The commitment cannot be dealt with on the charge as it stands. The officiating sessions judge is desired to return the record to the deputy magistrate that he may re-commit the prisoners on an amended charge, if he considers there is evidence to support it. If not, he will at once release the prisoners.

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Case of  
CAUREE  
SAHOO  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

SHAH SAHEEOOLLAH

*versus*

Bhaugulpore.

MUSST. NUSSEERUN.

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Case of  
MUSST.

NUSSEERUN.

Remarks on  
commitments  
with reference  
to value of  
property stolen.Magistrates  
to be guided  
as to commitments,  
depending on  
value of property,  
by value as ascertained  
by them, after  
due enquiries.  
Reference to  
Laws and Construction.

This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. of 1841, and Circular Order dated 18th March, 1842, by Mr. D. Cunliffe, officiating sessions judge of Bhaugulpore on the 23rd December, 1856, with the following report.

The particulars of the case are briefly these. A burglary was committed on the night of 11th July, 1856, in the prosecutor's house in the town of Monghyr and property to the value of Rs. 757-4-0 was stolen. The prosecutor caused the premises of the prisoner to be searched, as some bad characters were constantly visitors at her house, some ornaments were discovered, and identified by the prosecutor and his witnesses, as belonging to the former and part of what had been stolen. The officiating magistrate Lord H. U. Browne sentenced the prisoner to six months' imprisonment with labor, convicting her of knowingly receiving and having in her possession stolen property. The prisoner appealed to this court on the 23rd October, 1856. The sentence is manifestly contrary to the provisions of Section 4, Regulation VI. of 1824, by which, the officiating magistrate should have committed the prisoners for trial to the sessions court, I therefore solicit the Court's order in the case.

The officiating magistrate's explanation is annexed in original, but after a second perusal of the record and the precedent cited by that officer, I do not concur in the sentiments expressed "that beyond the mere assertion of the prosecutor, there is nothing on record to shew that property to the value of Rs. 757-4, was stolen at all." The prosecutor's statement is supported by the evidence of two witnesses, Domon and Jafer Khan, who depose, that 525 Rs. cash, besides ornaments, the latter stating to the value of 250 Rs. were stolen, these depositions agree with the list of property filed by the prosecutor, while the officiating magistrate admits in the abstract statement of conviction, that "a burglary took place and property to the value of Rs. 757-4 was carried off by the robbers" again "that theft was a big one." From the explanation furnished, there is nothing to induce me to alter my former opinion, that the prisoner ought to have been committed to the sessions court for trial according to law. If the officiating magistrate

considered he had authority in the case, he should have specified his reasons for sentencing the prisoner, and since by his own admissions and the evidence adduced, a burglary had occurred, and property valued Rs. 757-4 was stolen, he had no jurisdiction in the case, I therefore consider the Court's opinion should be obtained before disposing of it in appeal.

From the officiating magistrate of Monghyr, to the sessions judge of Bhaugulpore No. 660 dated 18th December, 1856.

In reply to your letter No. 299 dated 4th December, 1856, I have the honor to state that in the case in question about 30 rupees worth of property was found, and that beyond the mere assertion of the prosecutor there is nothing on record to shew that property the value of 757-4-0 rupees was stolen at all, consequently it appears to me that this case is similar to that of Lulah Burnewur and Government *versus* Gooahun Burnewur in which the Sudder Court ruled that such assertion should not be "allowed to operate directly in aggravation of the offence" nor as a *ground for commitment*.

You will find the case in the Nizamut Adawlut reports for January 1854 volume IV. No. 1, page 82, and a perusal of it will I think, render it unnecessary for you to make the reference to the Sudder Court.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley, No. 197 dated 16th March, 1857.)

The Court observe that under the ruling laid down in Construction 1030, and by Clause 2, Section 4, Regulation XII. 1818, and Section 4, Regulation VI. 1824 the prisoner Musst. Nusserun, should have been committed for trial to the sessions. In his letter to the sessions judge dated 18th December, 1856 the magistrate appears to consider that the value of the property stolen was exaggerated, but the Court do *not* find this stated in the magistrate's proceeding convicting the prisoner, dated 24th September, 1856. Had he then considered the value of the stolen property over-estimated, the magistrate should have made enquiries, as pointed out by Construction 1030, and have stated in his proceeding the *reasons for questioning the truth of the prosecutor's estimate of the value of the property*. In regard to his letter of 29th December, No. 683, the Court find that the witnesses stated that they *knew*, not that they *heard*, of the amount and value of the property taken. The Court therefore quash the magistrate's order as illegal; and direct him to commit the prisoner for trial to the sessions, as provided by law.

1857.

March 16.

Case of  
MUSST.  
NUSSEERAN.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND ANUND SHAHA

*versus*

Dinagopore.

BAESSOOW CHOWKEEDAR.

1857.

March 27.

Case of  
BAESSOOW

CHOWKEEDAR

Remarks on  
commitments,  
escape from  
*hajut* not a  
matter of ag-  
gravation to  
call for com-  
mitment.

Sessions  
Judge's pro-  
ceedings  
quashed. Va-  
lue of property  
under 50 Rs.  
And escaping  
from *hajut* not  
being a legal  
charge in ag-  
gravation.

CRIME CHARGED.—1st count, theft of property valued at Rs. 6-12 the prisoner at the time holding the office of village chowkeedar; 2nd count, having possession of stolen property knowing it to be such; 3rd count, breaking jail while under trial.

CRIME ESTABLISHED.—Having possession of stolen property knowing it to be such.

Committing Officer.—Mr. T. E. Ravenshaw, magistrate of Dinagopore.

Tried before Mr. J. Grant, sessions judge of Dinagopore, on the 27th September, 1856.

*Remarks by the sessions judge.*—The prisoner, a chowkeedar, while thieving in the prosecutor's house on the night of the 23rd of June, was seized by the prosecutor, got away from him and afterwards returned with the neighbours when he was apprehended. Before the arrival of the police mohurrir, the prisoner confessed to the villagers and produced a silver anklet which he had stolen from the person of the prosecutor's wife. On the night of the 10th of July the prisoner made his escape from *hajut* and was re-apprehended on the 15th. In the *foujdary* he denied the theft and said that he ran away (from jail) for fear of his life. The jury found the prisoner guilty on the 3rd count (breaking jail) only, but the 2nd count (possession of stolen property knowing it to be such) is in my opinion clearly proved. The jury doubt the evidence to the production of the stolen property as the witnesses state that the police had not then arrived, and that the prisoner was roughly used and because the alleged seizure of the prisoner by the prosecutor in the house of the latter appears to them impossible. The jury apparently supposed that a false charge of theft was made by the prosecutor against the prisoner from jealousy, but that is not even pleaded by the prisoner, who attributes the charge to a quarrel with the villagers regarding the non-payment of his wages.

*Sentence passed by the lower court.*—To be imprisoned with labor and irons for five years.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 259, dated 27th March, 1857.

The Court observe that the magistrate should have disposed of the case himself under Clause 4, Section 3, Regulation XII.

1818, as the value of the property stolen was under Rs. 50, and as the offence of escaping from *hajut* which alone is charged in *aggravation* was not a count on which the prisoner could be committed to the sessions. (Vide decision of Nizamut Adawlut volume 6, page 75.) The sessions judge, under para. 4 of Circular Order No. 70 of 14th November, 1851, should have cancelled the commitment. The Court therefore quash the proceedings of the sessions court, and direct that the case be returned to the magistrate to be disposed of by that officer.

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March 27.

Case of  
BAESSOO  
CHOWKEE-  
DAR.

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Q U A R T E R L Y  
No.  
FOR APRIL, MAY AND JUNE.  
1857.

**NOTICE.**

WITH reference to Government Order, dated the 27th May, 1857, No. 2783, *Quarterly* Numbers of Selected cases will in future be published.



PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND MUSST. SUBOOK BIBI

*versus*

SHEIKH BATYE (No. 10,) SHEIKH DURGONA (No. 11,) BAJMANJEE (No. 12,) SHEIKH BODUL (No. 13,) AND BOTIE (No. 14.)

Sylhet.

CRIME CHARGED.—1st count No. 10, wilful murder of Musst. Soonder Bibi; 2nd count, Nos. 11 to 14, being accessaries after the fact contained in the 1st count.

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CRIME ESTABLISHED.—No. 10, culpable homicide; Nos. 11 to 14, being accessaries after the fact to culpable homicide.

April 2.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Case of  
SHEIKH  
BATYE  
and others.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 11th November, 1856.

Prisoners acquitted though confessing. Proceedings at the police, and evidence otherwise, being unsatisfactory.

*Remarks by the officiating sessions judge.*—This case occurred in April last, but information was not given at the thannah until the 23rd of August following. The particulars of the case are as follows: Sheikh Batye, prisoner No. 10, the nephew of Musst. Soonder Bibi (the deceased) was intimate and she became pregnant by him, and he, in consequence was desirous of administering drugs to her to procure abortion, to which the deceased at first demurred and was beaten by prisoner No. 10, she afterwards took the medicine and from the effects thereof she died, the remaining prisoners Nos. 11, 12, 13 and 14, having concerted together, buried the corpse, and concealed the crime. The charge has been clearly proved against all the prisoners by confessions before the police and magistrate, as well as by the evidence of the witnesses Nos. 10 to 14. In this court the prisoners pleaded *not guilty*, but their confessions taken before the police and the magistrate have been proved by the subscribing witnesses thereto and there is no reason to doubt their having been voluntarily made.

The assessors convict the prisoner No. 10, of culpable homicide, prisoners Nos. 11 to 14, of being accessaries after the fact in the above crime, and in which verdict I concur and sentence the prisoners as shewn below, this description of crime is unhappily very prevalent in this district.

*Sentence passed by the lower court.*—No. 10, to five (5) years imprisonment with labor in irons. Nos. 11 to 14, to be imprisoned without irons for two (2) years from this date and to pay a fine each of Rs. (30) thirty on or before the 26th November, 1856, or in default of payment to labor until the fine be paid or the term of their sentence expire.

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April 2.

Case of  
SHEIKH  
BATYE  
and others.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal on the grounds that the charge on which they are convicted is false; that the deceased, Soonder Bibi, was never pregnant, nor was she made to take any drug to cause abortion, but died from cholera; that the case has been got up by Premnarayan Dey, mohurrir of pharree Gwailghat, now acting darogah of Jyntiapore, in order to obtain a good name for activity as a police officer. It is added that prisoners were ill-treated by the darogah till they confessed, and that they repeated their confessions before the magistrate, because they were told by the darogah, that if they did not, they would be punished for wilful perjury.

We find from the record that the prisoner Batye No. 10 confessed to the darogah on 7th November, 1856, and repeated the confession to the magistrate on the 9th idem, to the following effect, i. e. that he had an intrigue with Soonder Bibi, his uncle's widow; that she was with child by him, and from shame of the probable exposure, he wished her to take something to cause abortion, and he procured some medicine for that purpose from Dorru's mother. He adds that Soonder Bibi was unwilling to take it, and that he, prisoner, beat her, and made her swallow it; that *immediately* the effects of the medicine were apparent, and Soonder Bibi died during the night; that with the assistance of his neighbours, whom he informed of the cause of Soonder's death, he buried her the next day. The other prisoners confessed to privy to the murder, and to having assisted in burying the body. Before the sessions judge all the prisoners repudiate their confessions, which they declared to have been extorted. Sheikh Batye pleaded that the informer, Aulum, had a grudge against him, and had therefore charged him falsely; the other prisoners stated that they were absent when Soonder was buried, but were unable satisfactorily to substantiate that defence.

The crime is said to have been committed about 5th Bysack 1262, corresponding with 16th April, 1856. It was not reported to the police till 24th August, following; when Aulum, the informer, deposed that he had seen the prisoner Batye beating the deceased, while the prisoner's mother held Soonder Bibi by the throat, so that she could not utter a sound; and that from a blow given by Batye, the deceased fell. He saw this through a hole in the door, and went away, and Soonder died from the effects of the beating. The darogah of Jyntiapore, and the mohurrir of Gwailghat were ordered to investigate this case. They arrived at the village on 4th September, and on 6th idem, forwarded a report stating that certain parties (all Hindoos) had said that Batye, a Musulman had got his uncle's widow Soonder Bibi, with child, and had compelled her to swallow some drug to produce abortion, and that she died from the effects.

We consider the whole of this enquiry open to suspicion, for the following reasons. The informer Aulum says he was afraid to make his communication at an earlier period ; but we cannot find what was the immediate motive of his doing so, after the lapse of so many months. No question on this point is put by any of the authorities by whom he was examined. In his first examination by the mohurrir on 7th September, he says he had mentioned the matter to no one till questioned by the mohurrir ; but why the mohurrir asked him, or how the mohurrir's suspicion was excited, does not appear. Further, the statement first made to the mohurrir of Gwailghat is utterly at variance with the statements made by the villagers, (all Hindoos, the prisoners being Musulmans,) that the deceased met her death by being compelled by the prisoner Batye to swallow drugs to procure abortion ; and, as regards this glaring discrepancy, not a single question has been put to the informer, either by the darogah, magistrate or sessions judge ; and apparently because the prisoners confessed to the crime before the police and magistrate, it has not been thought necessary to cross-examine the informer on this very material point. After Batye prisoner No. 10, had been sent in to the magistrate, the informer Aulum on 10th September, stated to the darogah, that having been apprehended on a suit under Regulation VII. 1799, instituted by Hinmat, he was detained at the Gwailghat Pharee on his way to Sylhet, and *questioned* by the police mohurrir about this homicide, and told what he knew. But this contradicts the mohurrir's first report, from which it appears that Aulum came, and *gave information of his own accord* ; and if this statement be accurate, there is no correct record of how the mohurrir got information, of the homicide so long after the event. Under these circumstances, we do not think the confessions trustworthy, and therefore direct that the prisoners be released.

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Case of  
SHEIKH  
BATYE  
and others.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*GOVERNMENT AND SHUNYE CHUNG  
CHOWKEEDAR*versus*

Sylhet.

SHIBRAM CHUNG.

1857.

CRIME CHARGED.—Wilful murder of Musst. Junye, and severe wounding of Musst. Kishoree.

April 4.

Committing Officer.—Mr. T. P. Larkins, magistrate of Sylhet.

Case of  
SHIBRAM  
CHUNG.

Tried before Mr. M. Shawe, officiating sessions judge of Sylhet, on the 27th February, 1857.

Prisoner sentenced capitally. Remarks on evidence of wife against her husband.

*Remarks by the officiating sessions judge.*—On the 13th ultimo, Shunye Chung Chowkeedar, accompanied by Musst. Junye and Musst. Kishoree both wounded, deposed before the officiating darogah of thannah Moolagool, that Shibram Chung, the prisoner, when taking his meal, found a straw in the rice, at which he was so much excited, that he seized a *dao* weighing eleven *chittacks*, and more than a cubit in length, and with it struck and wounded his wife Musst. Kishoree, and his mother-in-law Musst. Junye. The wound inflicted on Musst. Junye, proved fatal, and from the effects of it she died on the 16th January last.

Musst. Kishoree, the wife of the prisoner, and who was wounded by him, is cited as an eye-witness, and she deposed that on the 1st of Magh, corresponding with the 13th ultimo, her husband, the prisoner, was taking his dinner in the *verandah* of the deceased's (Musst. Junye's) house; he found a straw in his food, in consequence he abused his wife and her parents, and she remonstrated, on which the prisoner seized a *dao*, and struck her, wounding her, her mother, Musst. Junye (the deceased) came to her (witness's) rescue, on which the prisoner inflicted two severe wounds on her, which ultimately caused her death.

This evidence is corroborated by that of the witnesses Nos. 2 and 3, Kannye Chung and Gour Chung, who deposed that the prisoner finding a straw in his food, became enraged, and inflicted a wound with a *dao* on his wife and two wounds on her mother, which caused her death. Witnesses Nos. 5, 6 and 7, Enosmeah, Rajib Chung and Anook Chung depose, that they saw the deceased and Musst. Kishoree, in a wounded state, and that the prisoner confessed to the crime; they also depose that there were two wounds on the deceased's head, one three and half inches in length and one inch in breadth, and another three

inches long and one inch broad, and that there was a wound on Musst. Kishoree's head three inches in length, and one inch in breadth.

The corpse of the deceased was examined by the civil surgeon Dr. I. Norval, witness No. 4, who deposes as follows: "That the body was in such a state of decomposition as only to admit of an external examination. On the left side of the head, above and rather before the ear, there was a wound of the scalp between three and four inches in length. On raising the scalp, the skull was found to have been cut through cleanly, in a direction downwards and forwards to the extent of three and half inches in length, and the brain underneath wounded to the depth of about half an inch. Such was the decomposed state of the tissues surrounding the wound, that I am unable to state positively whether the wound was inflicted during life or not: the wound would have been quite sufficient to have caused death; no other marks of injury were detected; the probability is that the wound was inflicted during life; in my opinion it might have been inflicted with a *dao* such as the weapon produced in court, or some such similar instrument.

The prisoner before the police, the magistrate and this court pleaded *not guilty*. The *futwa* of the law officer, who sat with me, convicts the prisoner of wilful murder, in which I concur.

The record does not show, that there was any previous quarrel between the prisoner and his wife and mother-in-law (the deceased;) there does not appear to have been any premeditation on the part of the prisoner, but that he made an attack on these helpless females in a sudden transport of rage, the cause for doing being but slight, his sanity has not been called into question throughout the trial, and I cannot find any extenuating circumstances in this case calling for the leniency of the Court, and therefore consider it my duty to recommend that the prisoner be sentenced capitally.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley) The evidence of the witnesses Nos. 2 and 3, clearly proves, that the prisoner, while eating, was provoked at finding some straw in his food, which food had been brought to him by his wife; that words passed between them on the subject; that the prisoner attacked and wounded his wife with a *dhao*, which he found near the door of his house; that the prisoner's mother-in-law came up and interfered, and that the prisoner attacked her with the *dhao*, striking her two blows on the head. The civil surgeon deposes that the head was cut through, one and a half inch into the brain, and that a *dhao*, or similar instrument would have caused such a wound. The prisoner's wife, having got inside the house, closed the door; and the prisoner then made one or two cuts with the *dhao* at

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Case of  
SHIBRAM  
CHUNG.



1857. the door. We have considered it unnecessary to refer to the evidence of witness No. 1, prisoner's wife, as it is only in cases where it is absolutely necessary for the purposes of public justice that such evidence should be taken. The prisoner calls no witnesses, and substantiates no defence. It does not clearly appear what cause of irritation to the prisoner may have been produced by the words which passed between the prisoner and his wife; but there is nothing to shew that the deceased gave prisoner any provocation; and the repetition of the first blow on the head by a second there, and the character of the instrument, and of the wound inflicted by it, indicate a malicious intent to take life. We therefore convict the prisoner of wilful murder, and sentence him to be hanged.

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Case of  
SHIBRAM  
CHUNG.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

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GOVERNMENT AND RAMNARAIN AGRAWALLA

Assam.

*versus*

1857.

April 6.

Case of  
CHANG JANG  
NAGA  
and others.

CHANG JANG NAGA (No. 1,) YANGSEE ALIAS JUNKEE NAGA (No. 2,) SALHOO NAGA (No. 3,) AND PANGBON NAGA (No. 4.)

CRIME CHARGED.—Dacoity attended with murder of Bhudd alias Cheingallooh.

Prisoners convicted on voluntary and detailed confessions. Remarks on the proceedings of the magistrate, and on the charge. Committing Officer.—Captain J. Holroyd, magistrate of Seebagur.

Tried before Major H. Vetch, deputy commissioner of Assam, on the 24th October, 1856.

*Remarks by the deputy commissioner.*—It appears that the prosecutor has a shop in the Jeypore Bazar, which was left at night in charge of the deceased and hearing that he had been murdered, he (prosecutor) went to the spot with the police and saw the corpse lying on the bedding with the throat cut and

several wounds on the head; a chest, which had contained opium and 70 Rs. in cash, had been broken into and rifled, and piece goods to the value of Rs. 305-12 carried off.

On information of four Nagas having been seen on the road under suspicious circumstances, a party was sent in pursuit of them, when the prisoner Pangbon was captured and confessed to being one of the dacoits, and named the other three prisoners as his confederates who at the time escaped, leaving behind them their arms and 40 articles of the stolen property, but they were eventually apprehended and confessed and with them five more of the stolen articles were recovered.

Before the jury, Chang Jang Naga, No. 1, pleaded guilty to the charge of dacoity, attended with murder, whilst Yangsee *alias* Jankee No. 2, and Salhoo Naga No. 3, pleaded guilty as accomplices, Pangbon No. 4, pleaded *not guilty*.

Before the police, the prisoner Chang Jang No. 1, confessed to having committed the dacoity in concert with the other three prisoners, and further that he himself killed the deceased, first giving him three cuts on the head with his *dao*, and afterwards despatched him by cutting his throat, the prisoner Yangsee *alias* Jankee No. 2, holding deceased's hands while he did so; he likewise confessed before the foudjary, with this difference,

\* The Nagas have (I apprehend) an idea that killing in this way would be considered less heinous than with a cutting instrument.

ence, that he says the deceased was clubbed\* to death; and that he, prisoner No. 1, struck the two first blows.

The prisoner Yangsee *alias* Jankee No. 2, confessed before the police to having committed the dacoity in company with the other three prisoners, whilst the prisoner Chang Jang No. 1, perpetrated the murder in the manner above described, with this difference, that he prisoner No. 2, held the deceased by the legs, Salhoo No. 3, pressed on his stomach and Pangbon No. 4, held his hand whilst Chang Jang cut his throat.

Before the sub-assistant he again confessed to having committed the dacoity, in company with the other prisoners, stating that Chang Jang murdered the deceased, whilst he No. 2 and the others robbed the house.

The prisoner Salhoo No. 3, before the police, confessed to having committed the dacoity in company with the other three prisoners, and stated that Chang Jang No. 1 killed the deceased, whilst he No. 3 and the others robbed the house, he made a second confession before the sub-assistant to the commissioner.

The prisoner Pangbon No. 4, before the police, confessed to having come down from the Hill with the other three prisoners and to having been with them when the dacoity was planned, but denied being present at its commission. This prisoner made similar admissions before the foudjary court.

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| 1857.       | Five witnesses* prove the apprehension of the prisoners and the recovery of the property.                                                                                                                                                                                                                                                              |
| April 6.    | Four witnesses† depose to the <i>soorut-hal</i> .                                                                                                                                                                                                                                                                                                      |
| Case of     | Four witnesses‡ prove the confessions made by the prisoners at the thannah.                                                                                                                                                                                                                                                                            |
| CHANG JANG  | Six witnesses§ prove the confessions made by the prisoners before the sub-assistant commissioner.                                                                                                                                                                                                                                                      |
| NAGA        | Four witnesses   depose to the identity of the property and to fact of the murder.                                                                                                                                                                                                                                                                     |
| and others. | Musst. Puhooree witness, deposes to all four of the prisoners having come to her house previous to the murder where they remained two days, the reasons assigned for their coming down being trade; that, under pretence of going to their hills, they left her house on the evening of the second day on the night of which the murder was committed. |
|             | <i>Defence.</i> —The prisoner Chang Jang No. 1, in his defence stated that he, his brother Yangsee, No. 2, with Salhoo No. 3, entered and robbed the shop whilst                                                                                                                                                                                       |
|             | Pangbon No. 4, stood outside and received the property; he admits that the deceased was clubbed to death, he, prisoner No. 1 striking the two first blows.                                                                                                                                                                                             |
|             | Yangsee <i>alias</i> Jankee No. 2, stated that he with Nos. 1 and 3, entered and robbed the house, that Chang Jang No. 1, clubbed the deceased to death, he, prisoner No. 2, and Salhoo No. 3, holding deceased at the time by the hands and feet.                                                                                                     |
|             | The prisoner Salhoo No. 3, again admits to having taken part in the robbery but not in the perpetration of the murder stating that Chang Jang No. 1, clubbed the deceased to death.                                                                                                                                                                    |
|             | The prisoner Pangbon No. 4, pleads that he remained outside the house all the time and had no hand in the perpetration of the murder.                                                                                                                                                                                                                  |
|             | <i>Verdict of Jury.</i> —The jury, in their verdict, find the prisoners guilty in the following degrees.                                                                                                                                                                                                                                               |
|             | Prisoner No. 1, of murder and dacoity.                                                                                                                                                                                                                                                                                                                 |
|             | Prisoners Nos. 2 and 3, of being accomplices in the murder and dacoity and prisoner No. 4, of dacoity.                                                                                                                                                                                                                                                 |
|             | <i>Magistrate's opinion.</i> —The magistrate would convict Chang Jang No. 1, of the charge of murder as a principal, and the prisoners Yangsee <i>alias</i> Jankee, No. 2, Salhoo No. 3, and Pangbon No. 4, as accomplices in the murder, and recommends that the prisoner Chang Jang be sentenced to suffer death; the prisoners                      |

|| Seemoo.  
Berusputtee.  
Kateah.  
Soakoora.

§ Inoo.  
Moakata.  
Jahub.  
Karim.  
Holee.  
Dhunnee.

† Sumpud.  
Angoottee.  
Koli.  
Sindooram.

\* Witnesses.  
Mohursah.  
Alle.  
Bappeeram.  
Bhagam.  
Dabeeram.

‡ Sumpud.  
Angoottee.  
Koli.  
Sindooram.

§ Inoo.  
Moakata.  
Jahub.  
Karim.  
Holee.  
Dhunnee.

|| Seemoo.  
Berusputtee.  
Kateah.  
Soakoora.

Yangsee *alias* Jankee No. 2, and Pangbon No. 4, he recommends imprisonment for life in transportation, and the prisoner Salhoo No. 3, in consideration of his youth, to 14 years' imprisonment in banishment.

*Opinion of Deputy Commissioner.*—I am of opinion that the circumstances under which the prisoners were traced and apprehended, the stolen property recovered, as well as their own confessions and admissions, afford complete proof of their having all of them been concerned in the dacoity attended with the murder of Bhudd *alias* Cheingallooh; but it is only by the confessions that we are made acquainted with the actual perpetrators of the murder; these disclose that the crime was planned with all the cunning and caution of the savage, accustomed to blood and intent on gratifying his desire for plunder; of these the police confessions are the most full, and, as respects the perpetration of the murder, most in accordance with the appearance of the corpse, I therefore rely on these, corroborated by those before the foudary and what has been stated by the prisoners in their own defence.

In that by the prisoner Chang Jang No. 1, he admits that he struck the deceased three blows on the head with his *dao* (a murderous description of weapon, used as well in war as an instrument of husbandry) and that afterwards, to prevent the deceased giving the alarm, he, with the same weapon, cut deceased's throat, saying that the prisoner Yangsee *alias* Jankee No. 2, assisted by holding the deceased down.

The prisoner Yangsee No. 2, confessed that he held down the deceased's feet whilst his throat was being cut by No. 1. Again in his defence he admitted to holding the deceased whilst No. 1, clubbed him to death.

The prisoner Salhoo No. 3, has been accused by the prisoners Nos. 1 and 2, of having assisted in holding the deceased, whilst No. 1, killed him, but this does not amount to proof, and he has all along denied having had any hand in the murder.

The prisoner Pangbon No. 4, in his confession, denied being present, and it was only in his defence that he has admitted that he was so, and then only to being outside.

I thereon convict the prisoner Chang Jang No. 1, of being principal in the first degree of the crime of dacoity attended with the murder of Bhudd; I also convict the prisoner Yangsee *alias* Jankee No. 2, of being a principal in the crime, and, as I see no extenuating circumstances in respect to either, I propose that they both be sentenced to suffer death.

The prisoner, Salhoo No. 3, I also convict of dacoity attended with murder; but, in consideration of his youth, and his being a servant or coolie of the principal, I would, as recommended by the magistrate, propose that he be sentenced to imprisonment with labor and irons in banishment for 14 years.

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The prisoner Pangbon No. 4, I convict of being an accomplice in the crime aforesaid; but as he also appears to have been a subordinate to the principals and so ill at the time as not to have been able to assist in removing the plunder to the hills, I would recommend that he be sentenced to fourteen years' imprisonment with labor and irons in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Since the trial was referred, Pangbon, one of the prisoners, is reported to have died in the zillah jail hospital. The guilt of the other prisoners Nos. 1, 2 and 3, is proved by their voluntary and detailed confessions before the police, the magistrate, and at the sessions, the only important discrepancy being that while to the darogah the prisoners admitted that a *dao* was the instrument with which the wounds were inflicted, and it is obvious from the evidence to the description of the wound that some sharp-cutting instrument must have been employed, before the magistrate they stated that the deceased was killed by blows with a *lattee* given him by the prisoner Chang Jang No. 1. The deputy commissioner accounts for this discrepancy in their statements in these words: "The Nagas have (I apprehend) an idea, that killing in this way would be considered less heinous than with a cutting instrument."

The deputy commissioner, looking at the mofussil confessions as giving the most detailed account of the facts, has recommended that prisoners Nos. 1 and 2, should be hanged. Before the magistrate prisoner No. 2, confesses only to having committed the dacoity, and, though present, to have had no hand in the murder; and his mofussil confession, though proved by the attesting witnesses, has not been tested, as it should have been by the magistrate, who should have examined the prisoner regarding the discrepancies apparent in his examination taken before the police darogah, as compared with that taken before himself.

A second count should also have been added in the calendar, viz. "for having in their possession plundered property knowing it to be obtained by dacoity;" for had the count on which the prisoners have been tried, failed of being proved, they must either have been released or recommitted and tried, before a conviction for knowingly having possession of stolen property, could have been obtained.

We convict the prisoners of the charge of dacoity attended with murder, and sentence the prisoner Chang Jang No. 1, who is evidently the principal both in the dacoity and murder, to death, and the two other prisoners to imprisonment for life in transportation beyond seas.

We call the attention of the deputy commissioner and magistrate to the list of articles entered in column 12 of the com-

parative statement, which appears to have been prepared by a writer in the office without any supervision on the part of the magistrate. We take at random the first and last items only. The first is "*Nogad Company 8*;" the last is "*mourkeenar poorana dhootee*." When English terms can be used, they ought to be so.

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Case of  
CHANG JANG  
NAGA  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

GOVERNMENT AND AZEEM SHEIKH

*versus*

NASIRADDI (No. 1,) SHEIKH DENOO (No. 2,) SHEIKH BHUTA (No. 3,) AND TAJUN BIBEE (No. 4.)

24-Pergunnahs.

CRIME CHARGED.—1st charge, 1st count, No. 1, wilful murder of Fakir Mahomed; Nos. 2, 3 and 4, being accomplices in the above wilful murder; 2nd count No. 1, assault on Azeem Sheikh and Fakir Mahomed with slight wounding of the former and culpable homicide of the latter; Nos. 2, 3 and 4, being accomplices in the above assault and culpable homicide; 2nd charge No. 2, assault and slight wounding of Fakir Mahomed, No. 3, aiding and abetting in the above assault.

1857.

April 7.

Case of  
NASIRADDI  
and others.

Committing Officer.—Mr. J. J. Grey, officiating magistrate of Howrah.

Tried before Mr. G. D. Wilkins, additional sessions judge of 24-Pergunnahs, on the 2nd October, 1856.

Prisoner convicted and sentenced to imprisonment for life, deliberate intention to murder not being proved. Remarks on Cl. 2, Sec. 6, Regulation LIII. of 1803, and suspension of sentence.

Remarks by the additional sessions judge.—On the evening of the 19th August last, the prisoners, Denoo and Bhuta, were returning home intoxicated, when on passing the house in which the prosecutor and his son, the deceased, Fakir Mahomed, resided, they either intentionally or by accident broke down a portion of the enclosure. A quarrel ensued between the deceased and the two aggressors, in which hard words and blows were exchanged in the first instance, and finally the prisoner, Denoo, struck the deceased a severe blow on the head with a bamboo, which appears to have unfitted the deceased for further contention, while the two aggressors retired, satisfied with what they had done, into the verandah. There had been no quarrel or ill-will between the parties previously. While the contest was going on, however, the prisoner Bhuta's mother-in-law, the prisoner, Tajun Bibee, hearing of it from the prisoner Nasiraddi's wife, called Nasiraddi to go with her to deceased's house

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Case of  
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and others.

to join and aid her son-in-law and his friend, Denoo, and, on reaching the house, called upon him to attack the wounded Fakir Mahomed and "to take his life" for which she "would be answerable." Nasirraddi, who is Denoo's brother-in-law, at once pulled a stake out of Azeem Sheikh's enclosure, and first striking Azeem Sheikh himself, who had arrived after the contest between his son the deceased and Denoo and Bhuta, and who was attempting to prevent further violence, proceeded to where the deceased was either sitting or lying prostrate on a platform having his wounded head washed and bound by two of his friends, and thrust the stake into his face causing it to penetrate and destroy the eye and to enter four inches into the brain. The deceased died in five or six hours from the effects of the wound, and of course was neither sensible nor spoke a word in the interim. The above particulars are satisfactorily proved by the evidence of the prosecutor and by witnesses Nos. 1, 2 and 10½, for the prosecution; while *the witnesses examined for the defence*, declare it was known throughout the village that the deceased had been killed by the three male prisoners. The witness, Sheikh Dos Mahomed No. 1, gave in the lower court, and before cross-examination before me, a different version of the order in which the blows were given and the various persons arrived on the spot; but the weight of the evidence is to the effect above detailed, and any confusion in the details as to time or succession of acts committed, is easily accounted for.

The prisoner, Nasiraddi, said before the magistrate that while sitting in the house of the witness, Panchcouree, he heard what was going on and proceeded to deceased's house where he witnessed the *gôlmal*, but could distinguish no one. Before me he has exhibited a savage and angry demeanor; denies all knowledge of the matter; declares the family of the deceased are on bad terms with him about some "*cazai*" affair, (a plea now advanced for the first time) and affirms he was all the time a beegah and a quarter off from the scene of action at the house of Sheikh Chaud, witness No. 10, which has not been proved. The prisoner, Denoo, says nothing further than that he and deceased had a quarrel and a fight together some fourteen or fifteen days previously about a cattle-grazing affair. The prisoner, Bhuta, told the magistrate he and Denoo were drunk on the night in question, and while passing deceased's house on their way home, Denoo caught hold of the poling to the house when deceased rushed out and abused them both and struck Denoo. He added he rescued Denoo from the deceased, when deceased set upon him, but used only his hands. On this there was a general *mêlée* which ended in nothing, and he (prisoner) went home to bed. Before me this person simply pleads *not guilty*. The prisoner, Tajun Bibi, admitted to the magistrate she had, on hearing of the quarrel, gone to deceased's house and on arriving

there, had used the words, "Beat the rascal till you kill him, I will bear the damage," but that the person she wished to be beaten was not the deceased, *but her own son-in-law, Bhuta, who half-starved her at home!* Before me she declares she went no where, and did nothing.

I should add that I quite agree with the magistrate in his censure of the police in the management of this case, which has very nearly tended to defeat public justice. The jemadar who declared the deceased had made a statement before death, (and which it is physically impossible he should have done) should never again be employed in the department. The 1st witness gave before me, which he must have been led by others to do, a statement in the first instance greatly at variance with his previous one, though in accordance with that of his fellow-eye-witness and the details of the incidents in the calendar. The witnesses, Nos. 9 and 10, are both, I find, relatives of the prosecutor, and the former too evasive in his testimony to be relied on. But for the consistent evidence of the 2nd witness, Panch-cource, backed by that of the 1st witness, Dos Mahomed, as far as it relates to the circumstances generally by that of the deceased's widow, Suggoo Bewa, No. 10½, and by that of witnesses to the defence from village hearsay, the case would have come to nothing, and a foul crime remained unpunished.

In concurrence with the law officer, I convict the prisoner, Nasiraddi, of aggravated culpable homicide, committed in cold blood without, as far as he was concerned, any provocation, and upon a person wounded, prostrate, and unable to offer resistance, and had the weapon he used been such as to have made it clear, he might have known he was about to inflict a deadly wound, or even had it been clear, it was his intention to use the stake in his hand in the manner it was used, I would have convicted him of wilful murder. We convict the 4th prisoner Tajun Bibi of being an accomplice in the aggravated culpable homicide. The other two prisoners we convict the first of assault and wounding only (as distinct from the attack made by Nasiraddi) and the second, Bhuta, of being an accomplice therein. I recommend that the prisoner, Nasiraddi, be transported for life. I propose to sentence Tajun Bibi to 5 years' imprisonment with labor and the other two prisoners to one year and three months respectively with labor commutable to a fine of 50 for Denoo and 10 Rs. for Bhuta.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This case has come before us in regard to the prisoners Nos. 1 and 4. The Resolutions of this Court of the 19th November, No. 979, and 31st December, No. 1110, ruled that it was not necessary for the sessions judge under Clause 2, Section 6, Regulation LIII. of 1803, to refer the cases or suspend issue of sentence in respect to prisoners,

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Nos. 2 and 3, because their final convictions and sentences were within the competence of the sessions judge, with reference to the charges on which they were convicted by him.

It is clearly proved that prisoner No. 1, with his two hands, drove a piece of stick taken by him from the fence of the house of deceased, into the eye of the deceased; that it dislocated the eye, and penetrated the brain. The evidence does not shew a premeditated intention to kill, but to do grievous bodily harm. The instrument was a stick taken from a near fence without any forethought or preparation. It is hardly to be presumed that the prisoner would know the imminent risk to life from wounding the eye. Such a blow with such an instrument, under such circumstances, is distinctly different from a blow with a *dhao*, or similar weapon, in which case the most ignorant may be presumed to know that the instrument and locality of the wound combined are likely directly to involve risk to life. We consider, under the above circumstances, imprisonment in transportation for life sufficient punishment, and sentence prisoner, No. 1, to it accordingly.

In regard to prisoner No. 4, it is clearly proved that she urged prisoner, No. 1, to assault deceased. We sentence her to five years' imprisonment with labor suited to her sex.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

MONCHOO ALIAS MOUNGCHOO LIFE CONVICT (No. 1.)  
SHEWCHA ALIAS SHOOYA TSA, LIFE CONVICT (No.  
2), KOOLKYE ALIAS KOLA KHGN, LIFE CONVICT  
(No. 3.) AND NAKORE ALIAS NAKOIN, LIFE CONVICT  
(No. 4.)

24-Pergunnahs.

CRIME CHARGED.—Being convicts, sentenced to imprisonment and transportation for life, did, on the 9th day of February, 1857, assault and severely wound another convict, named Ramloehun Sen, with intention of thereby causing and with the knowledge that they were likely thereby to cause, the death of the said Ramloehun Sen.

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Case of

MONCHOO  
alias MOUNG-  
CHOO and  
others.

Committing Officer.—Mr. H. D. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. T. C. Loch, additional sessions judge of the 24-Pergunnahs, on the 21st February, 1857.

*Remarks by the additional sessions judge.*—The prisoners being under sentence of imprisonment in transportation for life, this case is tried under Act XVIII. of 1845.

As the prisoners are Burmese, the examination was conducted through a Burmese convict, who acted as interpreter and who took a solemn affirmation to do so correctly.

It appears that Mr. John Floyd, jailor of the Alipore jail, had occasion early on the morning of the 9th of February, instant, to send Ramloehun Sen, a prisoner, mohurrir, into a weaving-yard, occupied by Burmese and other prisoners, to give orders about some cloth that was required to be sent out of the jail during that day; what exactly took place does not clearly transpire, but the prisoners, now under trial, violently attacked Ramloehun, prisoner No. 2, seizing him from behind and throwing him down, Nos. 3 and 4, striking him on the head with sticks taken from the loom frames and No. 1, kneeled on him and attempted at first to cut his throat, but as Ramloehun had his cloth wrapped round it, he was unable to succeed, he then caught one of Ramloehun's ears with one hand and tried to cut it off with a sharp piece of iron which he had in the other. Nos. 2, 3 and 4, in the meantime were keeping off the few burkundazes who had come up and the other prisoners who were coming to his assistance.

One of the  
accused sentenced capital-  
ly; and others  
to enhanced  
rigorous pri-  
son discipline.  
Reward re-  
commended  
for a Sikh  
confined in the  
jail who dis-  
armed one pri-  
soner.

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On Mr. Floyd hearing the uproar, he went into the jail, where he met prisoner No. 1, with his hair loose and in a very excited state running out of the yard, he was immediately secured, on reaching the yard Mr Floyd found all the Burmese prisoners armed with sticks taken from the looms, striking about them and the Bengalli prisoners trying to get away from them. On seeing Mr. Floyd they threw down their sticks. Ramlochun was being carried out with blood flowing profusely from the wounds on his head and ear. The knife, Monchoo (prisoner No. 1,) had used, was made from a piece of hoop-iron ground very sharp and must have been procured from the smith's shop, wherein some Burmese prisoners are employed, it had, immediately after the disturbance took place, been snatched out of Monchoo's hand, very luckily, by Khanjim Singh, a Sikh, just before Mr. Floyd's arrival, and which most probably prevented Monchoo running a muck, which from the excited state he was in, was not at all improbable.

The above facts are clearly established and the only question is as to the *intent* to kill, or, whether as the prisoners assert they only intended to punish Ramlochun for having threatened to report them for laziness.

From the determined manner prisoner No. 2, threw Ramlochun down, the size of the sticks used by Nos. 3 and 4, and the way prisoner No. 1, tried to get at the man's throat to cut it with an instrument carefully prepared beforehand and perfectly capable of inflicting a mortal wound, there is in my mind no doubt they intended to kill.

Whether the motive was to inflict punishment or commit an offence, in order to be transferred to another jail I do not know but the intent was the same, I therefore, agreeing with the *futwa* of the law officer, convict Monchoo *alias* MOUNGCHOO, Shewcha *alias* Shooya Tsa, Koolkhye *alias* Kola Khgn and Nakore *alias* Nakoin of having committed an assault on Ramlochun Sen with intent to kill the said Ramlochun Sen, and as the accused are undergoing sentence of imprisonment in transportation for life, recommend that they be sentenced capitally.

On perusal of the above remarks, the following *Resolution* was recorded by the Court (Present: Messrs. G. Loch and H. V. Bayley) No. 240, dated the 1st April, 1857.

The Court, before passing final orders in this case, wish the following points to be cleared up. The witness, Ramlochun, says in his deposition to the magistrate that the prisoner, Monchoo, No. 1, commenced cutting his left ear, and that he seized his hand; at the end of his deposition, he says "owing to the cloth round my throat he could not get at it;" but the witness does not distinctly state whether the prisoner *attempted*

to get at his throat. At the sessions, however, he speaks somewhat more distinctly, and says that Monchoo came with the iron instrument and gave him a "*ponch*" in the throat, but the cloth prevented the *péché* having effect. The word is written "*ponch*" in the first place and "*péché*" subsequently. The former may signify a stab; the latter signifies a twist, as if there had been an attempt at strangulation or the twisting of the knife; but if an attempt at strangulation, it is at variance with the rest of the evidence. Perhaps the witness, when giving his evidence before the additional sessions judge, showed by gesture what was done to him, and what he meant by the words made use of in his written deposition as above stated.

The civil surgeon states that the cut was "about the ear." The Court wish the situation of the wound to be more particularly described, and an opinion to be given by that officer, whether it was, or was not in the region of, and towards the throat; or whether there was any thing to prove clearly the throat was the part intended to have been injured.

The *immediate* attention of the additional sessions judge is requested to this Resolution.

In reply to the above, the following explanation was submitted by the additional sessions judge of the 24-Pergunnahs dated the 6th April, 1857.

Read the Resolution of the Sudder Nizamut Adawlut dated 1st of April, 1857, in the above case, agreeably to which Mr. assistant surgeon White was re-examined on the points indicated, and this examination is herewith forwarded.

With reference to the second paragraph of the above resolution, I have to remark that I distinctly understood from Ramlochun that the first attempt *was at his throat*, but *his* cloth being wound round it, the prisoner Monchoo, was unable to get at it, and then began to cut at his ear.

With regard to the discrepancy in the words "*ponch*" পোন্চ and "*péché*" পেঁচে I beg to state this is a mistake in the copy of the deposition sent to the sudder; for the word "*péché*" is used, throughout in the original. Both words mean the same, and "*péché*" when used with reference to a knife or other sharp instrument means "cutting," but when used with reference to a rope, cloth, &c. means twisting.

I forward the original *nuthee* and would suggest that all *nuthees* in original be sent up to the sudder in future, the copies being retained in the judge's court; otherwise there is no security that the right papers come before the Court of final jurisdiction.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners were tried as life-convicts under Act XVIII. of 1845. It is proved that prisoner No. 1, endeavoured to cut the throat of Ramlochun with a

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sharp iron, converted to answer the purposes of a knife, or other cutting instrument; that prisoner No. 2, seized and held him previously to prisoner No. 1, making the above attempt, and aided in preventing any assistance being given to the said Ramlochun, while No. 1, was acting as above stated; and that prisoners Nos. 2 and 3, struck the said Ramlochun with *lattees* of considerable size (3 cubits long and about three inches in circumference) on the head; one of the wounds was a severe one. The prisoners substantiate no defence. It is merely pleaded by them that the object was to frighten, not to injure the prosecutor. But this is not proved at all.

Adverting to the precedent of this Court 30th November 1850, case of Sooraj and others, and Lalljee's case, 5th March, 1852; p. 305, Nizamut Adawlut reports, (five first lines of page) we consider that the object of deterrent example will be sufficiently met by a capital sentence on the prisoner No. 1. We sentence him accordingly. We sentence prisoners Nos. 2, 3 and 4, as in the case of Sooraj and others, viz. "to be double ironed, and to be kept at the discretion of the jail authorities, as far as possible separate from other prisoners at the hardest labor of which the system of jail discipline admits, for the term of five years, with the exception of one month in each year which is to be passed in strictly solitary confinement; the execution of this sentence or any part of it being open to remission after a time by the superior local authority, on the report of the magistrate in the event of his having reason to be satisfied with the general behaviour of any of the prisoners."

The conduct of prisoner Khuyan Singh, Sikh, in taking the sharp iron instrument from the prisoner No. 1, is very meritorious; and should receive some substantial reward, either by mitigation of the sentence under which he is imprisoned, or in such other way as the Superintendent of the Jail thinks fit to recommend.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

*Trial No. 2.*

GOVERNMENT

*versus*

KARTICK DOSS.

*Trial No. 3.*

KARTICK DOSS (No. 1.) MOHESH CHUNDER DOSS  
(No. 2.) SUNNESSY LUSHKUR (No. 3.) AND HULLO-  
DHUR TEORE (No. 4.)

24-Pergun-  
nahs.

CRIME CHARGED.—*Trial No. 2.*—Wounding Hullo-  
dhur Teore on the throat with a knife with intent to murder the  
said Hullo-dhur; 2nd count, cutting and wounding the said  
Hullo-dhur with intent to do him bodily injury.

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*Trial No. 3.*—Nos. 1, 2 and 3, sodomy in having felonious-  
ly, wickedly and against the order of nature committed and per-  
petrated the abominable crime of buggery with Hullo-dhur Teore  
prisoner No. 4; No. 4, sodomy in having permitted the prisoners  
Nos. 1, 2 and 3, to commit upon him the said abominable  
crime.

Prisoners  
convicted of  
the charges;  
the pleas in  
appeal being  
overruled.

CRIME ESTABLISHED.—*Trial No. 2.*—Wounding with intent  
to murder.

*Trial No. 3.*—Sodomy.

Committing Officer.—Mr. H. Fergusson, magistrate of 21-  
Pergunnahs.

Tried before Mr. G. D. Wilkins, additional sessions judge of  
21-Pergunnahs, on the 4th November, 1856.

*Remarks by the additional sessions judge in trial No. 2.*  
From the prisoner's admissions, made clearly without any  
intention or wish to injure himself or others by them, as from  
the evidence in another case tried to-day in which the same  
parties with others are concerned, it is sufficiently evident that  
the prisoner was on the night of the 27th September last, as  
he had often been before, passing the night with Hullo-dhur  
Teore for a purpose which cannot be described. Some quarrel  
arose between them, when the prisoner made a violent assault  
on Hullo-dhur, inflicting on his throat with a knife a dangerous  
wound. Hullo-dhur in trying to save himself cut his fingers,  
and the prisoner made off, leaving the other bleeding profusely  
and screaming for assistance.

The only direct evidence is that of the wounded man, and as  
from the nature of the prisoner's defence, and his own reluctance

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to admit of his previous acquaintance with the prisoner might have been anticipated, his story has not on all points been very consistent. He has, however, from first to last described the person who wounded him and the manner, time and place, in which the wounds were inflicted without variation, and his testimony is confirmed by circumstantial evidence which is most conclusive. Immediately after the attack several persons rushed to his assistance and found him bleeding from a deep stabbing wound on the throat. He told them at once who had wounded him and how. On a search being made on the spot, a knife, with a cloth-covered handle covered with blood, was found and at once recognised as the prisoner's. And the prisoner, instead of going home, ran to a distant village, where he communicated to a chowkeedar, who was a stranger to him, and who arrested him on suspicion, what he had done. The chowkeedar, witness No. 10, promised to release him if he told the truth, and when he had done so, broke his promise; but the communication was made nevertheless, and could neither have been collusively made with any one, nor falsely made for any possible object.

The prisoner, who calls no witnesses, denied his guilt to the magistrate and to me. He said he had been passing the night with Hollodhur for the purpose I have hinted at, and he admitted he had often done so before, an admission which is confirmed by the evidence of witnesses Nos. 7 and 8 for the prosecution. But he added four persons whom he named came the night in question to Hollodhur, *for the same purpose*, who turned him out of the house, whom he stealthily watched misconducting themselves, and who *he guessed* were the persons by whom Hollodhur was subsequently wounded.

The law officer convicts the prisoner of wounding with intent to murder, and I concur. An aggregate sentence has been passed this day on the prisoner for both offences in the second case in which he appears as a prisoner.

*Trial No. 3.*—From some admissions made and circumstances elicited in a case of wounding with intent to murder, enquiries were made by the magistrate of the 24-Pergunnahs which have resulted in this commitment.

It is perfectly clear that for a length of time the prisoner Hullodhur, a man at least fifty or fifty-five years of age, and who gains a livelihood by selling fish and medicines and *practising incantations*, has been in the habit of getting young men to visit him for an improper purpose, and that he has in return for their prostitution supplied them with both food and money, the other three prisoners at the bar are the persons alluded to, and they all admit the charge to the magistrate; the prisoner Sunnessy, repeating his confession to me. Five witnesses testify to the prisoner's practices being well known in the village to

all the neighbours; and the admitted guilt of the three younger men necessarily inculcates the older sinner, there being no ground whatever for supposing the story has been fabricated for any object. Moreover, the prisoner Hullodhur, himself admits he was aware the villagers have for a length of time imputed to him the systematic indulgence in the crime with which he is now charged. None of the prisoners cite any witnesses, and in concurrence with the law officer, I convict them of the offence charged against them and sentence them as follows.

Kartick Doss No. 1, for this offence and as convicted in another case of wounding with intent to murder, will be imprisoned ten years with labor and irons, being five years for each offence.

Of prisoners Nos. 2, 3 and 4, convicted of this charge only, prisoners Nos. 2 and 3, will be each imprisoned five years with labor and irons; and prisoner No. 4, nine years, two years of that term being in lieu of corporal punishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal on the following grounds; Kartick, prisoner No. 1, denies his guilt and states that his age is about twelve or thirteen years; that on the day Hullodhur was wounded he was on a visit to his uncle at another village; that on his return he was apprehended by the chowkeedar, who told him that Hullodhur had been wounded; that being but a child, he, in his ignorance, called for no witnesses; that the inquiry was improperly conducted by the magistrate and that the sessions judge, without ascertaining the motive which could have led to the commission of the crime, has convicted the prisoner.

On reference to the record, we find the prisoner's age variously stated from eighteen to twenty-three years. He is charged with two crimes, viz. wounding with intent to kill, and sodomy. The first charge is proved against him by the evidence of the wounded man, and the corroborative statements of the witnesses Nos. 7, 8, 9 and 10. He also confessed his guilt when apprehended, and is unable in any way to substantiate the defence he has advanced on trial. The second crime is proved by his voluntary confession before the magistrate. It would seem that some dispute regarding the commission of this latter crime led to the commission of the former. We reject this appeal.

The prisoners Mohesh Doss No. 2, and Sunnessy Lushkur No. 3, plead that they were, on the suspicion of their neighbours, arrested on a charge of committing sodomy with Hullodhur, that when questioned by the darogah, they did not understand the purport of his examination, and admitted that they visited Hullodhur, which they did in the way of business, he having advanced money to them. They add that when they

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were sent to the magistrate, that officer only asked them whether they visited Hullodhur, and on their admitting this, committed them for trial.

The prisoners Nos. 2 and 3, are convicted, on their voluntary confessions before the magistrate, of having committed the crime charged. And these confessions are corroborated by the evidence of the villagers, who state that these prisoners and Kartick prisoner No. 1, were in the frequent habit of visiting Hullodhur and remaining with him during the night in turn, and in public were seen to conduct themselves with him in an improper manner. We reject this appeal.

The prisoner Hullodhur Teore No. 4, denies the crime, and states that he lent money to Kartick and Mohesh; that being unable to recover the amount, he complained to the gomashita; and that Mohesh offered him rupees 2, which he refused to take. Further, that on the evening of that day, Kartick came to his house, and under pretence of starting early next morning for Calcutta, slept there, and in the night attempted to murder him.

As to the evidence against this prisoner, we remark that the confessions of the other prisoners, implicating him, are consistent, and fully supported by the circumstances of both cases. The general notoriety in the village that sodomy was committed in the prisoner's house, and that the other prisoners were known and seen to visit him, and stay with him during the night by turns, are facts clearly proved. Hullodhur admits that he resided alone. We have no reason to suppose that this charge is false, nor do the prisoners shew that it has originated from malice. We reject the petitioners' appeal.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

ARJOON ROY (No. 5,) KIRTOO ROY (No. 6,) SHEO  
(No. 7,) JANKY MISSER (No. 10,) ALLAOODHIN  
(No. 11,) MADARUN (No. 12,) DOARKA ROY (No.  
13,) JHUMUN (No. 14,) BOUK (No. 15,) AND PRAUN-  
PUTH (No. 16.)

Tirhoot.

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Case of  
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and others.

CRIME CHARGED.—Riot and wilful murder of Mohun. Aheer and Hurruck Pandy by shooting them with guns loaded with shot and ball and Nos. 7, 10, 11, 12, 13, 14 and 16, riot attended with the wilful murder of Mohun Aheer and Hurruck Pandy.

Prisoners convicted of riot with murder. One sentenced capitally ; and others to exemplary punishment, with reference to prevalence of the crime.

Committing Officer.—Mr. H. T. Raikes, joint-magistrate of Tirhoot.

Tried before Mr. R. Forbes, sessions judge of Tirhoot on the 2nd February, 1857.

*Remarks by the sessions judge.*—The two first prisoners Nos. 5 and 6, were indicted for riot and the wilful murder of two persons by shooting them with guns loaded with shot and ball, and the remaining eight with having been in the riot attended with that fatal result, and I refer the trial for the final orders of the Nizamut Adawlut, because my law officer and myself agree in finding them guilty of the crimes for which they have been arraigned.

For a long time a bad feeling appears to have existed between the prisoner Arjoon Roy (No. 5,) the chief and ring-leader of these rioters and whose house is in Mouzah Sookbun, and the prosecutor Govind Patuck and his uncle Hurjees Patuck witness (No. 1,) living in the adjacent village of Malkowlee (called also Palkowlee,) for the existence of which bad feeling, two reasons are assigned.

*First.*—The prisoner Arjoon Roy had in 1255, F. S. purchased from Ramdyal Patuck, Putteedar, and relative of the prosecutor Govind Patuck a 2-anna share of Mouzah Malkowlee, which share the witness Hurjees Patuck claimed in virtue of a deed of conditional mortgage from his relative Ramdyal Patuck, to cancel which deed a suit instituted by the prisoner Arjoon Roy before the Chuprah Sudder Ameen and decreed in his favor in that court, is pending in appeal.

*Secondly.*—Up to the end of 1261, F. S. the prisoner Arjoon Roy held from the Betheah Rajah a farming lease of Mouzah Sookbun, which village the Rajah having in 1262 taken into

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his own management let in farm from 1263 to Eshur Dutt, the younger brother of the witness Hurjees Patuck, who refused to comply with the request of Arjoon Roy for a Kutkina lease of the property, and the opposition made by the latter in his endeavours to prevent the cultivation of the land of Mouzah Sookbun was the immediate cause of the occurrence by which the two deceased persons "Mohun Aheer and Hurruck Pandey," lost their lives by gun-shot wounds from the hands of the prisoner Arjoon Roy and Kirtoo Roy (Nos. 5 and 6.)

It appears that on the 14th August or day preceding the riot, the prosecutor Govind Patuck having got information that the prisoner (No. 5.) was preparing to create some riotous opposition, gave notice very early the next morning at the thannah of Bhugha, distant about 2 or 2½ *cos*s from Mouzah Malkowlee and Sookbun, and though a burkundaz (witness No. 28.) was immediately deputed by the darogah to prevent a breach of the peace, he unfortunately did not arrive in time to prevent its occurrence, the riot and murder which led to this trial taking place before he reached the spot.

From the evidence adduced for the prosecution, it appears that about 10 o'clock A. M. of the day of the occurrence the deceased Hurruck Pandey, who was the servant of the prosecutor Govind Patuck, had taken the deceased "Mohun Aheer," Jagoo Jalaha and Rada Sonar witnesses (Nos. 9 and 10,) Gopal Kunikar and Sree Koormee ryots of Malkowlee to cultivate land in Mouzah Sookbun which they were doing, when two persons Narain Dosadh and Jokhun Chumar on the part of the prisoner Arjoon Roy came and ordered them to desist, and on the ryots expressing their refusal to do so, those two persons went and told Arjoon Roy, who, bringing with him the prisoner (No. 6.) Sheo (No. 7,) Jankee Misser (No. 10,) Allaoodhin (No. 11,) Mudarun (No. 12,) Dwarka Roy (No. 13,) Jhunin (No. 14,) Bouk (No. 15,) Praunputh Roy (No. 16,) and Joogun Roy and Purmanet Roy (both absent,) some being relations and others dependants of Arjoon Roy, in number about forty rioters, armed some with guns and others with swords, gundasas, clubs and spears, came to the field which the Malkowlee ryots were cultivating, who seeing them approach, ran away and the rioters followed. Both had reached the boundary of Malkowlee, when the witness Hurjees Patuck hearing the uproar came out of his house accompanied by seven or eight men and remonstrating with Arjoon Roy told him not to create a disturbance. Upon this, the two prisoners Arjoon Roy and Kirtoo Roy and Joogun Roy (absent,) who all carried loaded guns, all three simultaneously fired among the ryots. The deceased "Mohun Aheer" who with the others was standing at no distance in front of the rioters when the shots were fired received the contents of Arjoon Roy's gun (large shot like slugs as

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described by the medical officer) in the chest and fell dead upon the spot, the deceased Hurruck Pandey received a ball also in the chest from the gun discharged by the prisoner Kirtoo Roy, and at once expired, and a charge of small shot fired by Joogun Roy (absent) struck the witness Rada Sonar (No. 9,) on the ear and also the witness Jagoo (No. 10,) on the upper lip, but without doing either of them much injury. The prisoner Sheo (No. 7,) also struck "Gopal Kumkar" one of the Malkowlee ryots with a gundasa on the head, and another of the rioters Purmanet Roy (absent) with a *lattee* struck the said Gopal Kumkar on the hand, the latter person originally a defendant in the case having been acquitted by the joint-magistrate.

The 10 eye-witnesses named in the margin all depose to having seen the arrival of the rioters, and the simultaneous discharge of the guns they carried by the prisoners Arjoon Roy and Kirtoo Roy Nos. 5 and 6, and Joogun Roy, (absent) the shot fired by Arjoon Roy taking instantaneous effect on the deceased Mohun Aheer, and that

- No. 1, Hurjees Patuck.
- " 2, Chuttoo Misser.
- " 3, Humoman Dutt Misser.
- " 4, Naik Chooreehuza.
- " 5, Mungulmon Tewarry.
- " 6, Ruda Koormee.
- " 7, Thakoordyal Pandey.
- " 8, Bhugwan Dutt.
- " 9, Rada Sonar.
- " 10, Jagoo Jalaha.

by Kirtoo Roy on the deceased Hurruck Pandey, both of whom fell mortally wounded on the spot, the shot fired by the absent Joogun Roy having struck the witnesses Rada Sonar and Jagoo Jalaha Nos. 9 and 10, and of the above 10 witnesses

- \* No. 1, Hurjees Patuck.
- " 4, Naik Chooreehuza.
- " 10, Jagoo Jalaha.

three\* depose to having seen the prisoner Sheo (No. 7,) who as the sequel shews confessed having knowingly accompanied

the rioters at the instigation of Arjoon Roy, strike Gopal

- † No. 2, Chuttoo Misser.
- " 5, Mungulmun.
- " 7, Thakoordyal Pandey.
- " 9, Rada Sonar.

Kumkar above mentioned as one of the Malkowlee ryots on the head with a gundasa, four† other witnesses deposing to having seen and recognised the pri-

soner No. 7, in the riot.

Each of the remaining prisoners Jankey Misser (No. 10,) Allaoodhin (No. 11,) Madarun (No. 12,) Doarka Roy (No. 13,) Jhumun (No. 14,) Bouk (No. 15,) and Praunputh (No. 16,) (all of whom at one time or another made confessions of their complicity similar to that of the prisoner Sheo (No. 7,) were) with the exception of the prisoner Jhumun (No. 14,) and Bouk (No. 15,) all sworn to by more than two of the ten eye-witnesses abovenamed, Jhumun, though mentioned by

the prosecutor Govind Patuck not being named by any witness and Bouk by only one and the same prosecutor.

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Two witnesses\* deposed to knowing that the prisoner Arjoon Roy went to Chuprah after the riot, of which occurrence they had both heard, and two others† that they saw a collection of people at Arjoon Roy's door on the morning of the day of the riot.

The witnesses to the mofussil inquest on the bodies of Mohun Aheer and Hurruck Pandey depose to the body of the former having seven gun-shot wounds all near or in the region of the side ribs, and on that of the latter was the mark of a ball on the right side of the chest passing right through and coming out at the back.

The medical officer who examined the bodies deposed that "both had died of gun-shot wounds. Hurruck Pandey had been wounded in the front part of the chest by a ball which had passed right through the body, wounding the right lung and the spinal marrow and passing out through the back. The other Mohun Aheer was wounded with several large shots like slugs, in the right side which had pierced the liver and the stomach and the other important organs situated there. I should say that there were at least twenty pellets which I saw remaining in the wounds inside the body. I have no doubt that both these men died from the effects of these wounds."

In the mofussil the prisoners, with the exception of Jankey Misser No. 10, pleaded *not guilty*; that prisoner's confession before attesting witnesses being to the effect that he joined the rioters and accompanied them, *after first refusing*, at the instigation or persuasion of Arjoon Roy.

Before the joint-magistrate the prisoners Arjoon Roy, and Kirtoo Roy pleaded *not guilty*, the remaining eight making similar attested confessions to that of the prisoner (No. 10,) in mofussil.

In this court all pleaded *not guilty*.

The prisoner Arjoon Roy pleaded in his defence, that between the prosecutor Govind Patuck and Hurjees Patuck and himself there has long been enmity, and that there is accordingly a suit pending in court between them. Pleading, however, an *alibi* as his chief defence, he alleges that he went to Chuprah on the 20th of Sawan, 1263, F. S. or 6th August last, (i. e. nine days before the riot took place) for the purpose of applying for a farm of Saejer Muhal belonging to the Ramnuggur Raj, and that on the 14th August or 28th Sawan, (the day immediately preceding that of the occurrence in this trial) he personally presented a petition to the deputy collector for a settlement of the Saejer Muhal.

The prisoner Kirtoo Roy also pleading an *alibi*, states that he went to Goruckpore in Assar or the month preceding that in which the riot took place, and that he remained there till the end of Sawan.

The defence of the remaining eight prisoners was merely a denial of their guilt, and all pleaded that the prosecutor had only implicated them in revenge for their refusing to comply with his request to give evidence; one of them Jankey Misser (No. 10,) adding the further plea that he was blind, to prove which he called five witnesses, the other seven prisoners having none to call.

Before noticing the evidence for the defence, I must call the particular attention of the superior court to a great irregularity and in my experience unprecedented, in the trial of this case in the foudarry court. I allude to the joint-magistrate's having allowed the answer of the principal prisoner Arjoon Roy which is unusually long, prolix, and spun out and occupies twenty-nine pages in the missil! the greater part too being irrelevant matter, to extend over a period of one entire month! This answer was not taken in parts daily, as might be supposed, during that time or begun and finished on consecutive days, but at intervals, whether according to the pleasure of the joint-magistrate or the prisoner the record does not shew. It does shew, however, that the taking of this prisoner's answer begun on the 20th of September (Saturday) and continued on the 22nd and 23rd, was after the latter date not resumed, but remained in *statu quo* until the 14th of October a period of three weeks having intermediately elapsed. It then again lay over till the 16th and 17th (the portion recorded on the latter date actually ending with an unfinished sentence!) and was again resumed on the 20th and concluded on the 21st or just one month from the beginning!

The irregularity in this procedure is the greater from there being no recorded order on each day's unfinished portion explaining that it was and why postponed, nor any proceeding of the joint-magistrate or petition of the prisoner (even were that admissible) to account for the long interval of three weeks, as above shewn, from the 23rd September to the 14th October. It so appears, however, that the piecemeal and disjointed way in which this prisoner's answer was taken, furnishes the best disproof of his defence and *alibi*, for it is very important to observe that though he did on the first day of his answer the 20th September, allude to (the year preceding that of the occurrence which led to this trial,) it was not until the 17th of October or nearly a month after that he made any mention of his defensive plea of having gone to Chuprah nine days before and presented a petition there on the day preceding that of the riot. Had his defence been true, he would assuredly have mentioned it on the first day, on which his answer was taken and not delayed to

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bring forward such a plea till near one month after, and almost at the very last! It is clear to me, therefore, that the *alibi* was an after-thought, which the long time consumed by his unusually protracted answer must have given him the greater time and opportunity to concoct and mature.

This prisoner named five witnesses to prove his *alibi* of whom three attended. In addition, however, to their evidence being contradictory, none of them on being questioned could swear positively where the prisoner was on the date of the riot, and his single witness a Chuprah mooktyar brought forward to prove the presentation of the petition to the deputy collector on the 14th August deposed to his having had interviews with the prisoner on the two preceding days (i. e. the 12th and 13th) at the cutcherry, both of which days were, however, close holidays (Bukreed) in all courts and offices!

It is true that on entry of such a petition having been presented on the 14th August, is found in a book called the deputy collector's Ruznamkili or Seah Buhee (sent for by the joint-magistrate.) But, in addition to this book not being bound, but only leaves sheets sewn together and which might easily be unsewn or made up in a few hours, the orders on petition or other papers are not regularly entered according to their dates. Thus on the 32nd leaf an order of the 16th May, is followed by one of the 15th, then again one of the 16th and after that one of the 14th. So again in the particular month of August, in which the riot took place the first order on the 59th leaf is one of the 29th August, after it one of the 30th after which again comes one of the 29th then one of the 30th again. The prisoner Kirtoo Roy called five witnesses, to prove his *alibi*, the evidence of three of whom only proved having seen him in the month of *Bhadoon* or after the riot in mouzah Pureree, and though the two others deposed that the prisoner was all Assar and Sawan at the house of his brother-in-law in mouzah Dhurrumpore, yet as one of them did not himself know the prisoner, but only *heard* from others that he was "Kirtoo Roy," and the other only *heard* that the prisoner had not left Dhurrumpore all Assar and Sawan, the evidence of either could not be considered credible or sufficient. The only other prisoner who named witnesses was Janky Misser No. 10, who called five to prove that he was too blind to have been in the riot, but as his witnesses only deposed that though his sight was impaired he was quite able to work in the field, his defence is not established.

The *futwa* of the law officer convicts the prisoners Arjoon Roy and Kirtoo Roy of riot and wilful murder of "Mohun Aheer" and "Hurruck Pandey" by shooting them with guns loaded with shot and ball as charged in the first count, in the calendar, and declares them liable to punishment by "*kissas*,"

and the remaining eight prisoners of riot attended with the murder of the above persons, and liable to discretionary punishment by *tazeer* and in the propriety of this finding I concur.

The fact of the prisoners, Arjoon Roy and Kirttoo Roy with the assembled rioters, having come to the spot with loaded guns and other arms clearly evinces a premeditated determination and readiness on their part to take life, shed blood, if thwarted in their object of preventing the land from being cultivated, and the cool and deliberate manner in which they are proved to have used their deadly weapon on the unarmed ryots without even the provocation of any show of opposition or threatened resistance on the part of the latter, shows a wanton and wicked disregard of human life for which I do not find a single extenuating circumstance. The prisoner Arjoon Roy appears to be a turbulent, tyrannical and lawless character, and the result of a reference to the records of the foudjary court, shows him to have been ten times complained against for acts of oppression, plunder, resistance of process, and false complaint and four times fined on conviction. So far from seeing any reason why the law's extreme penalty should not be inflicted on these two prisoners, I consider such a sentence just and proper for example's sake and the public peace and safety.

The remaining prisoners Sheo, Jankey Misser, Allaoodhin, Madarun, Dwarka Roy, Jhumun, Bouk and Pranputh, have all confessed that, *after first refusing*, when instigated or persuaded by the prisoner Arjoon Roy, they eventually joined and accompanied the other rioters to the scene of action. On the question whether any and what criminality attaches to parties shown to have accompanied others in affrays or violent breaches of the peace in which, though those persons may not be proved to have committed any particular act or to have taken an active part, life has been lost or blood shed, I would refer to ruling of the superior Court in a case of riot and wilful murder (Yad Allee and others sessions of zillah Chumparun for February 1856,) in which a person lost his life from a spear-wound. In that case the Court on the 22nd April last, acquitted three persons, on the ground that "although present, there is nothing to show that they took any part in the attack" on the deceased, nor could they have "foreseen it or the quarrel which ended in it." In the present case, however, the prisoners' own admission of their first refusing when asked to go shows a consciousness on their part that their presence and services were wanted for an illegal or improper purpose, and as with their eyes open they accompanied those who carried loaded guns and other weapons (some of themselves also being stated by some of the witnesses to have been armed,) it seems the fairest inference that they must or at least might have foreseen the possibility or probability of the lamentable and fatal occurrence which

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did take place, and I do not therefore think that the case, in justice be held. Without dwelling on the admitted truism that there were no rioters there could be no riots, I deem it right to remark on the evident increase of these agrarian outrages in this part of the country, and I submit that if examples are not made of those who by their company and co-operation encourage and abet the direct perpetrators and ringleaders, the law will be powerless to repress them. I recommend that these eight prisoners be sentenced to be imprisoned each for seven years with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It is clearly proved by the evidence that the prisoners Arjoon Roy and Kirtooy Roy, with Joogun Roy (not apprehended) headed the riot, armed with guns; that these three men fired, and Mohun Aheer and Hurruck Pandey, who were opposite to them at a little distance, fell dead, and Radhey Soonar and Jagoo Joolaha were wounded. The evidence against Arjoon Roy, as being the party who shot Mohun Aheer, is consistent throughout. It is also clear that he was the leader of the rioters, and the cause of this outrage in which murder has been committed. He went to enforce what appears to have been an illegal claim in an illegal and riotous manner, and his being armed with a loaded gun, and his having brought others armed with guns, swords and *lattees*, shews that he was prepared to use any violence to obtain his purpose. We see no grounds for mitigation of the capital sentence proposed by the sessions judge in his case.

As regards the prisoner, Kirtooy Roy, we observe that Hurjees Patuck, who was present when the riot took place, and immediately after went to the thannah and gave information on oath, makes no mention of Kirtooy Roy's name, but charges Joogun Roy with the murder of Hurruck Pandey, and Purmanuth Roy with having fired and wounded Radhey Soonar and Jagoo Joolaha. The wounded men, however, who gave their evidence to the darogah on the following day (16th August,) distinctly depose to Kirtooy Roy being among the rioters, and that he was armed with a gun and fired it. They added, however, that they were unable to state whether Hurruck Pandey was killed by the shot fired by Kirtooy Roy or by Joogun Roy, or by whose shot they themselves were wounded. Taking into consideration, therefore, this doubt, and the youth of the prisoner who is about eighteen years of age, we would not order the extreme penalty of death proposed by the sessions judge, on him.

We convict all the prisoners as guilty of riot attended with murder; and considering the prevalence of affrays mentioned by the sessions judge, and the necessity of making an example of the leaders and instigators in such riots as these, as well as of punishing severely all concerned in committing such gross

breaches of the peace, we sentence the prisoner Arjoon to be hung;—Kirtoo Roy to be imprisoned for life in transportation beyond sea; and the other prisoners each to be imprisoned with labor and irons in banishment for fourteen years.

The sessions judge will call the joint-magistrate's attention to Circular Order of this Court of 31st August, 1853, No. 111, paragraph 1. He is also requested to call upon the joint-magistrate to explain (and to submit such\* explanation with his opinion as to its sufficiency or otherwise to this Court) why he allowed the examination of the prisoner Arjoon Roy to extend over so great a length of time, and permitted so much irrelevant matter as appears in the prisoner's defence, to have been entered in the record.

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\* *From the sessions judge of Tirhoot to the register of the Nizamut Adawlut No. 75, dated 23rd June, 1857.*

Referring to the concluding paragraph of the remarks of the presiding judges, dated the 13th ultimo, on the trial of Arjoon Roy and others, I have the honor of submitting the accompanying copy of a letter of explanation, No. 112, of the 13th instant, from the joint-magistrate of Chumparun.

Influenced as the joint-magistrate appears to have been in allowing the prisoner to make so rambling and irrelevant a defence and extending over so much time and space in the record solely by a sense of justice and his desire to allow the prisoner accused of murder every opportunity of clearing himself, I must admit that the prisoner "Arjoon Roy" was a most impracticable and turbulent person, when even in this court it was very difficult to restrain within due bounds.

I am, however, of opinion that it would have been more regular and usual and altogether a more preferable course if the joint-magistrate, on finding that the prisoner would not after the first day or two complete his defence from his own mouth, had ordered and allowed him, as is often done, to insert in a separate petition whatever else he might wish to say.

Adverting to the concluding paragraph of the joint-magistrate's letter "with regard to the absence of recorded remarks on the defence, &c.," I have to observe that the joint-magistrate appears to have misunderstood my meaning. What I said was that the "irregularity" (viz. of the defence extending over so many days) was "the greater from there being no recorded *order* (not *remark*) on each day's unfinished portion explaining" that it was, and why, postponed. I did not of course mean that the joint-magistrate should have recorded any *remarks* on the defence, while the case was pending before him.

*From the joint-magistrate of Chumparun to the sessions judge of Tirhoot No. 112, dated the 13th May, 1857.*

In reply to your letter No. 37, dated 20th ultimo, with its enclosures detailed in the margin, I have the honor to forward to you the explanation required.

Remarks of the presiding judge and copy of extract from proceedings of Nizamut Adawlut in the case of Arjoon Roy and others dated 13th ultimo; Extract from sessions judge's report on the same case dated 2nd

The reasons for the examination of the prisoner Arjoon Roy, extending over so great a length of time, were, that the prisoner would

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ARJOON ROY  
and others.

February 1857. Warrant to carry out not give his defence in a more concise manner. Before a prisoner the final order of the superior court. can be committed to the sessions,

it is necessary to take his defence and examine the witnesses or documentary evidence he may cite in his justification ; for some consecutive days Arjoon Roy was examined and urged to conclude his defence and name his witnesses, but he persisted in making a lengthy and irrelevant statement.

On more than one occasion he pleaded ill-health, which disabled him from bringing his statement to a close. It being out of my power to compel him to name the evidence on which he grounded his defence, or to delay current business of my court, in recording a protracted and irrelevant statement, I postponed the examination, as the case had to remain on the file pending the appearance of certain witnesses. The above reasons account for the intervals which occurred in the examination.

In a case involving life or death, it was incumbent on me to afford the prisoner every opportunity of establishing his innocence in my power, and I was not aware that I could commit a prisoner without hearing the whole of his defence.

It does not appear that the length of statement made by the prisoner has been attended with ill consequences or that any impediment was thereby thrown in the way of justice ; on the contrary the prisoner was enabled to organise and carry out and attempt to prove an *alibi*, the falsity of which I brought to notice in my reasons for committal, and which of itself strongly corroborated the truth of the charge.

That the length of the rambling statement made by the prisoner was unprecedented in your experience I have no doubt, but I would submit that the perverse and contumacious conduct of the prisoner, Arjoon Roy, both before and after conviction was also unprecedented.

In support of this I may mention that after having explained to him the sentence of the superior court, he twice appealed to Government, and endeavoured to prevail upon the sub-assistant surgeon to give him a medical certificate to delay the execution of the sentence. The prisoner from first to last knew that his life was forfeited, and he was accordingly desperate.

With reference to the absence of recorded remarks on the defence it bore on the face of it, the only explanation I can now give, viz. that it was a series of futile attempts on the part of a criminal to prove his innocence when guilty, a conviction of which at times incapacitated him from proceeding with even his rambling statement ; but to have recorded such views before committal would have been premature.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND RAMKANT KYBERT

*versus*

SHEIKH KAMALOODEEN.

Dacca.

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Case of  
SHEIKH  
KAMALOODEEN.

**CRIME CHARGED.**—Burglarious entry into the house of the prosecutor, accompanied with attempt to murder the prosecutor by stabbing him in the abdomen and otherwise wounding him with a knife.

**Committing Officer.**—Mr. C. Jenkins, officiating magistrate of Dacca.

Tried before Mr. E. S. Pearson, officiating sessions judge of Dacca, on the 4th February, 1857.

**Remarks by the officiating sessions judge.**—The circumstances of the case as proved by the evidence, are that on the 9th December last at 3 A. M. the prisoner burglariously entered the house of the prosecutor by cutting the fastenings of the door; but before he could steal any thing he was caught by prosecutor, when, in order to free himself, he stabbed prosecutor in the abdomen with a knife and wounded him in two other places and then made off. Prosecutor distinctly recognized him at the time, and two neighbour witnesses Nos. 13 and 15,\* coming in,

Prisoner convicted of severe wounding in the perpetration of burglary. Sentenced to fourteen years' imprisonment in banishment.

\* No. 13, Rajchunder Kybert.

„ 15, Judeesteer Kybert.

hearing him cry out, saw a man running away.

hended immediately after by the

† No. 1, Doorgut Chowkeedar.

‡ No. 2, Sachace Burkundaz.

the prisoner confessed, as he also did at the thannah and before the magistrate, and the knife was identified as belonging to

§ No. 18, Allabursh.

„ 19, Sheikh Jahabursh.

|| No. 6, Doctor W. A. Green.

The prisoner was apprehended immediately after by the chowkeedar witness No. 1,† before whom and the fandy burkundaz witness No. 2,‡ who was stationed in the village and came up at once, and before the thannah and before the magistrate, and the knife was identified as belonging to him by witnesses Nos. 18 and 19.§

The civil surgeon|| deposed that the wound in the abdomen from its position,

if it had gone in the least degree deeper must have been an exceedingly dangerous one, as it was, it had not apparently, actually penetrated into the abdominal cavity.

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SHIFIKH  
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DEEN.

The prisoner pleaded *not guilty*, but admitted afterwards in his defence, that he had gone to prosecutor's house that night to meet prosecutor's wife by assignation: that prosecutor had caught him there, and that he had the knife in his hand, and does not know how prosecutor may have been wounded in the struggle. He called no witnesses.

The law officer found prisoner guilty of the burglarious entry accompanied with wounding, but not with intent to kill, and gave a *futwa* of *akoobut*.

From this finding I dissent, as the intent to kill must, I conceive, be presumed from the nature and position of the wound, the weapon, and the circumstance of the prisoner carrying such an instrument with him.

I consider the entire charge proved against him, and would recommend that he be imprisoned for life in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The charge of burglary and wounding is fully proved against the prisoner by the evidence for the prosecution, and by the confessions of the prisoner, firstly to the villagers next before the police, and then before the magistrate. The burglarious entry is also to a certain extent admitted by the prisoner before the sessions judge. The civil surgeon deposes that the wound was not dangerous; but might have been so. A knife is, more or less, an instrument dangerous to life. But there is nothing to indicate that prisoner had any other object in taking it than for the purpose of burglarious entry. The wounding of prosecutor was sudden, and unpremeditated, and done with the instrument with prisoner at the time when he found himself seized. Looking to the course of decisions in similar cases, we sentence the prisoner to fourteen years' imprisonment, with labor and irons, in banishment.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

SHEIKH POOKEEA.

Mymensingh.

CRIME CHARGED.—Culpable homicide of Shoma Sheikh.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 3rd January, 1857.

*Remarks by the sessions judge.*—From the evidence recorded on the trial, it would appear that on a certain day in Assin last, at noon, the deceased on going to the house of one Lally Sheikh, where the prisoner resided, an altercation ensued between them regarding some kitchen utensils which the latter had borrowed, and the prisoner kicked the deceased on the forehead, and on the deceased using abusive language towards the prisoner on account of this ill-usage, the latter inflicted a blow with a *peeree* (a stool used by the natives when taking their meals) on the head of the deceased, which fractured his skull, and he fell to the ground, and that he died sixteen days afterwards from the effects of the injury.

The civil assistant surgeon, who examined the deceased's body, deposed that the front part of his skull was fractured, and that the anterior lobes of the brain on that part were very much injured, and that these injuries were the cause of his death, that there were also three contusions on the head in addition of the fracture.

Before the police, the magistrate and in this court, although the prisoner denied the charge, yet he admitted that he kicked the deceased on the neck and high words having passed between them, the deceased attempted to strike him with a piece of wood, but that on laying hold of the deceased's hands and attempting to snatch it from him it struck the deceased on the head. I am of opinion from the evidence recorded that the charge has been fully brought home to the prisoner. It has been clearly established on the evidence of two eye-witnesses, Juggunnath Naie and Tooreca Sheikh,\* that the prisoner

\* Nos. 1 and 2.

kicked the deceased on the forehead and then inflicted a blow with a *peeree* on his head owing to an altercation he had with him at the time regarding some kitchen utensils; and the

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Case of  
 SHEIKH  
 POOKEEA.

Prisoner convicted. The first police investigation found to be false.

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Case of  
SHEIKH  
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evidence of the civil assistant surgeon goes to prove, that the death resulted from the effects of the injuries the deceased received on the head. The prisoner endeavours to show that the deceased died from fever, and impugns the evidence of the eye-witnesses pleading enmity with them, but the witnesses examined by him have signally failed to prove this story. Taking therefore, into consideration the fact of the prisoner having admitted that he kicked the deceased on the neck and on the evidence of the witnesses for the prosecution, I convict him, in concurrence with the *futwa* of the law officer, of the crime charged, and sentence him to imprisonment for four years without irons, and to pay a fine of 50 rupees in lieu of labor or in default to labor.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner appeals, and urges that he did not strike the deceased; that the deceased with a wooden stool in his hand advanced to strike him; that he and the deceased struggled together, and in the struggle the deceased struck his own head with the stool; that the deceased recovered from the effects of that blow, and went about his business as usual, and that he died of fever 15 or 16 days subsequently. Appellant adds that the witnesses contradict themselves, and that it is clear from the former investigation they were not present when the struggle occurred, but have been tutored by the darogah, Kalichurn, deputed by the magistrate to make the second investigation, to depose that they had seen the deceased struck by the prisoner. It is added by appellant that the wife of the deceased has deposed that her husband died of fever.

The darogah who made the first investigation reported that the deceased had died of fever. This statement was completely contradicted by the examination of the body made by the civil surgeon; and thereon a second investigation by another darogah, was ordered by the magistrate. The witnesses Nos. 1 and 2, who saw the prisoner strike the deceased were not examined on the former occasion, but they satisfactorily account for this, as also for being present when the assault and battery occurred. The previous investigation appears to have been made very unsatisfactorily. We think the charge on which the prisoner is convicted is proved by the evidence of the witnesses Nos. 1 and 2, corroborated by that of the neighbours, and the admissions of the prisoner, and also by the examination of the body made by the civil surgeon; and we find nothing urged in the prisoner's appeal to warrant any interference with the orders of the sessions judge. The appeal is rejected.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND KASHINATH PAL

*versus*

RAJENDER SHAHA (No. 2.) DURBESH BISWAS (No. 3.)  
AND RAJCHUNDER DULHEE (No. 4.)

Rajshahye.

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CRIME CHARGED.—1st count, prisoner No. 2, forgery in having, with a fraudulent intent, counterfeited the signatures of Kashinath Pal, Bulram Koe, and Kureem Nikoree, and affixed marks purporting those of Sakoo Meea and Tukkee Meea to a certain mookhtarnamah, dated the 9th Assin 1263, authorizing one Annundehunder Sandial to receive a certain sum of money from the officiating joint-magistrate of Pubna on account of the said Kashinath Pal and others; 2nd count, causing the above-mentioned forged signatures to be affixed to the said mookhtarnamah; 3rd count, being an accessory before and after the fact to the said forgery; 4th count, fraudulently issuing, publishing as true, and giving effect to the said mookhtarnamah, bearing forged signatures, by causing it to be presented for attestation in the court of the assistant to the joint-magistrate of Pubna by the said Annundehunder Sandial and to be attested by prisoners, Nos. 3 and 4, or other persons unknown; he, the prisoner, well knowing that the said signatures were forged; 5th count, Nos. 3 and 4, perjury in having, on the 29th of September 1856, deposed, under a solemn declaration taken instead of an oath before the assistant to the joint-magistrate of Pubna, that Kashinath Pal had affixed his signature and that Sakoo Meea and Tukkee Meea had themselves authorized marks to be affixed, representing their signatures to a certain mookhtarnamah authorizing Annundehunder Sandial to receive a certain sum of money from the officiating joint-magistrate of Pubna on account of the said Kashinath Pal and others, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 6th count, No. 2, subornation of perjury in causing the prisoners Nos. 3 and 4, or other persons unknown to commit the perjury described above; 7th count, fraudulently and for his own benefit causing Annundehunder Sandial to obtain Co.'s Rs. 288-12-9, from the officiating joint-magistrate of Pubna on the false pretence that a certain mookhtarnamah authorizing the said Annundehunder Sandial to receive the money, had been signed by Kashinath Pal, Bulram Koe, and Kurreem Nikaree and sanctioned by Sakoo Meea and Tukkee Meea.

Prisoners convicted. Pleas in appeal being overruled. Remarks on perjury, and subornation, in connection with attestation of powers of attorney.



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Committing Officer.—Mr. H. L. Dampier, officiating joint-magistrate of Pubna.

Tried before Mr. L. Jackson, officiating sessions judge of Rajshahye, on the 9th January, 1857.

*Remarks by the officiating sessions judge.*—The prisoners are charged, in an indictment, which emulates “English crown” practice, upon seven counts, with forgery, fraudulent publishing, perjury, subornation and fraud, under the following circumstances.

The prisoner Rajender (No. 2,) is one of seven persons, who had a claim against the Charity Hospital Committee at Pubna, on account of boat-hire. This claim amounting to some 1200 Rupees was resisted by the Committee as exorbitant and a sum of Rs. 288 was tendered in payment, which sum, being refused by the claimants, was somewhat irregularly placed in the joint magistrate’s hands, and entered in his accounts as a judicial deposit.

After a time the claimants petitioned to be paid this amount, and the hospital committee consented to its being paid provided the parties would give up any further claim, and give a receipt in full of all demands.

Accordingly, on the 24th September a mookhtar (witness No. 7, Annundchunder Sandyal,) instructed by the prisoner *Rajender* presented a power of attorney, bearing the signatures or marks of all the seven claimants, which was attested before the assistant magistrate Mr. Harvey by the subscribing witnesses, prisoners No. 3, *Durbesh* Biswas and No. 4, *Rajchunder* Dhuli, and under which authority the said mookhtar on the following day, drew out the sum of money above mentioned giving the stipulated receipt.

A few days afterwards, on the 3rd October *Kashinath Pal*, joint-prosecutor and witness No. 1, petitioned the joint-magistrate alleging that he had not signed the power of attorney, nor been cognizant of the proceeding just mentioned, and as it appeared upon inquiry, that neither this witness nor the other parties concerned had signed the mookhtarnamah, the three prisoners were put upon their defence and committed for trial.

It is clearly proved by witness No. 7, *Annundchunder Sandyal*, *Hurreedass* No. 9, and *Nobin Chunder Doss* mohafez No. 11, that the prisoner (No. 2,) *Rajender Shah*, instructed the mookhtar, and placed the mookhtarnamah in his hands. That the prisoners Nos. 3 and 4, *Durbesh* and *Rajchunder* were brought by No. 2, and deposed on solemn affirmation (in lieu of an oath) before the assistant magistrate that the several persons named in the mookhtarnamah, had respectively signed and permitted their signature to be affixed to the mookhtarnamah and that the said assistant magistrate was empowered by oral instructions from his superior, the joint-magistrate, to ad-

minister such affirmation for the purpose of attesting mookhtar-namahs.

It is also proved by witnesses, No. 1, *Kashinath Pal*, No. 2, *Tukkee Meea*, No. 3, *Bulram Koe*, No. 4, Kurrumber Nikaree and No. 5, Sakoo Meea, five of the interested parties, the sixth having died, that the signatures are not theirs, and were not affixed with their express permission or cognizance.

There is nothing, however, to show by whom or how the pretended signatures were made unless we are to draw an inference from the fact also proved by witness, No. 6, *Nobocoomar Mookerjee*, stamp-vendor, that the prisoner, *Rajender*, purchased the stamped paper on the date of filing the mooktarnamah. (N. B. the endorsement on the stamp as well as the vendor's book, make the buyer's name *Rajchundro Shah*; but the vendor distinctly affirms that it was the prisoner *Rajendro*, and I think the variation of little consequence.)

The publication, however, charged in the 4th count is undoubtedly established, and if the act comes within the definition of forgery, a conviction must follow. But the next fact is that the prisoner immediately after drawing the money, paid over or tendered the several shares to the parties entitled to it, all of whom, with the exception of *Kashinath Pal* No. 1, received the amount. That witness states that on hearing what had been done, he at first demurred to receive the money and finally petitioned the joint-magistrate. His deposition fully reveals the fact that the reason of his making the petition, and the origin of the present prosecution, is his alarm lest the acceptance of the smaller amount under the circumstances, should prejudice his right to sue for the balance of his claim and I may as well say that the witness's demeanour and the tenor of the statements made by the other parties named, suggested to the court a grave doubt whether the proceeding had not been the subject of consultation and discussion between all the parties as well *before* as it was confessedly *after* the filing of the mookhtarnamah.

There was clearly, therefore, no attempt to defraud the recipients nor was there any fraud upon the hospital committee, (of which indeed there is no precise averment in the calendar) as the prisoner only obtained from them what they must in any case have paid and were ready to pay, nor does it appear that they could have insisted upon the condition that all further demand should be waived in the receipt; without some fraudulent purpose there can be no forgery. For a case very closely resembling this. See Nizamut Adawlut Reports for 1851, Vol. I. part I. page 729.

But there was manifest perjury. Supposing it to be a legal function of the assistant magistrate acting under the orders of his superior (Regulation IV. of 1796 and XIII. of 1797 Section 2)

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to take attestations of mookhtarnamahs generally, and assuming also that the withdrawing a sum of money from deposit in the foudjary court was an act giving the magistrate and his assistant jurisdiction.

There was a clear, and we may infer, a corrupt intention to mislead the assistant magistrate in that particular matter. Then as to the motive, on the part of prisoners Nos. 3 and 4, who actually made the false statement, it is clear that their connexion with the business, terminated with the attestation of the mookhtarnamah.

They cannot be supposed to have known or to have influenced the other prisoners after proceedings.

They manifestly committed the offence described in Regulation XVII. of 1817, Section 13, Clause 1, namely, of "having given intentionally and deliberately a false deposition, under a solemn declaration taken instead of an oath before a public officer authorized to take the same," which deposition "appears to have been given falsely and criminally on a point material to the case" in which it was taken.

There can be no doubt as to the identity of the prisoners, they are perfectly recognised by several of the witnesses, and one of them in particular is well known about the courts, being one of the despicable class called "*ekrari* mookhtars," persons maintained by the general body of mookhtars for the purpose of witnessing and proving confessions taken before the magistrates. From this he must have been perfectly cognizant of the nature of the act he was committing, the other is a resident of the town and had himself once a case in the magistrate's court of which he had entrusted the management to the same mookhtar.

The innocence of their falsehood, as I have said, cannot be maintained and if it could, I think, it would be most dangerous doctrine to admit that persons might wilfully and intentionally mislead judicial officers by statements made upon solemn affirmation, and afterwards justify such acts by the purity of their intentions. But moreover this is not the prisoners' defence, they deny the fact altogether. DARBESH contending that if he had been an attesting witness, his proper signature would have been at the foot of the mookhtarnamah, and RAJCHUNDER declaring that he is ignorant man and cannot tell who has involved him in this business. He seems at first to have set up an *alibi*, which he has since abandoned. None of the prisoners call any witnesses and their pleas are not deserving of a moment's consideration.

I convict them, therefore, of wilful and corrupt perjury and the subornation being clearly brought home to the prisoner

\* Annundchunder Sandyal, Nobin Chand Doss, Nobo Coomar Mookerjee.

Rajender by the testimony of witnesses Nos. 7, 11 and 6.\* I convict him likewise upon that

count, the same being also the finding of the jury, who assisted at the trial.

The sentence of three years' imprisonment is recorded against all the prisoners, but inasmuch as it is possible that the superior Court may think the case one for mitigation of punishment and especially as it contains one or two points of difficulty upon which I should be glad to have that Court's direction, I submit the papers to the Nizamut Adawlut, with a recommendation that the sentence upon DURBESH and RAJCHUNDER be reduced to one year and that upon *Rajender* to two years. I cannot recommend a greater mitigation in the case of *Rajender* because he does not appear to bear an unimpeachable character, and I have, since his conviction, examined the report of my predecessor upon a case tried at the sessions here for the 2nd quarter of 1854, held in July 1854, in which, although the prisoner was acquitted, it is recorded that strong suspicion attaches to him of having been cognizant of the act of theft described, in regard to a sum of money placed in his charge.

Among minor points connected with the case it is proper to notice.

That the mookhtarnamah bears only the initials, instead of the full signature of the assistant magistrate, who took the attestation.

That it would, in my opinion, be more regular and satisfactory if the magistrate made over, by *proceeding*, to his assistant such portions of his duties as he thinks right to entrust to him under the Regulations quoted.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Sessions Judge and the jury convicted the prisoner No. 2, of subornation of perjury, and Nos. 3 and 4, of perjury. The Sessions Judge records a sentence of three years' imprisonment against them all; and refers the case to the Nizamut Adawlut; firstly as one for mitigation of punishment; and next "as it contains one or two points of difficulty upon which" he "should be glad to have that Court's direction."

Prisoner No. 2, appeals from the Sessions Judge's finding. The other prisoners do not appeal.

The sessions judge *has convicted* prisoner No. 2, of subornation of perjury. Under these circumstances we do not go into the question of whether other charges were or not proved, merely because there are points of difficulty on which the Sessions Judge would wish for this Court's instructions. The case will only be treated as one of an appeal from prisoner No. 2, from the finding of the Sessions Judge on the charge of subornation of perjury on which No. 2, has been convicted, and as one of a reference on the point of mitigation of punishment, in regard to all three prisoners.

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The pleas urged in appeal by the counsel of prisoner No. 2, are, that the power of attorney and petition were really the acts and deeds of the sharers whose names were alleged to have been signed by them, or in their behalf; that if this had not been so, the money, as representing their respective shares, would not have been tendered and received, and receipts given; that whatever Rajender did, he did in good faith, and for the benefit of all interested, and that Ramnath, the prosecutor, made it an after act to deny Rajender's authority, because, on second thoughts, he did not wish to be barred suing out his larger claim in Court, but that he had duly acquiesced in Rajender's acts at first.

None of these pleas refute the direct evidence to subornation of perjury, which is the ground of the conviction against which prisoner No. 2, appeals. We have carefully considered that evidence, and deem it sufficient to warrant the conviction. There is no evidence adduced to rebut it, or to prove the specific plea that Kashinath did sign, and had acquiesced. On the contrary we find that Kasinath did not receive the money, and did not give a receipt, but petitioned against Rajender's proceedings as soon as he was aware of them. We, therefore, reject the appeal of prisoner No. 2, against the conviction of the Sessions Judge on the charge of subornation of perjury.

In respect to the mitigation of punishment proposed for all three prisoners, the Judge does not state the specific grounds on which he makes the proposal. We infer they are those recorded in his 9th paragraph. If so, we do not see that the doubt there stated can have weight after the "subornation being clearly brought home to the prisoner Rajender" as stated in the 15th paragraph, nor that the mitigation is called for in regard to prisoners Nos. 3 and 4; for it is highly important to endeavour to suppress the too prevailing practice of perjury in attestation of alleged powers of attorney. We do not therefore concur in the sessions judge's proposal. The defects pointed out in the concluding paragraph of his letter should be noticed to the Magistrate, so that that officer may in future conform to the Sessions Judge's views in regard to them.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

SHEW TAHEL (No. 1, APPELLANT,) DEENDIAL SAHOO  
(No. 2, APPELLANT,) AND PURSHADEE LAUL (No. 3.)

Bhaugulpore.

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and others.

Prisoners  
convicted of  
forgery. Re-  
marks on delay  
by the Sessions  
Judge in the  
trial.

CRIME CHARGED.—1st count, forgery and fabrication of a *farikhatee*, dated 1st Sawan 1262, in Hindee language, purporting to be a *farikhatee* given by Bhugwan Sahoo, witness No. 4, on receipt of rupees 20; 2nd count, uttering and giving effect to the same in the court, knowing it to be forged and fabricated; 3rd count, forging the signature of Bhugwan Sahoo on the above *farikhatee*; 4th count, forging the signature of Keshee Gope, Soophul Munder and Bullee Munder; 5th count, writing the said *farikhatee*, knowing it to be forged.

CRIME ESTABLISHED.—Nos. 1 and 2, uttering and giving effect to a *farikhatee*, dated 1st Sawan, 1262, in Hindee language, purporting to be a *farikhatee* given by Bhugwan Sahoo, witness No. 4, on receipt of rupees 20, knowing it to be forged and fabricated. No. 3, forging the signature of Keshee Gope, Soophul and Bullee Munder, and writing the said *farikhatee*, knowing it to be forged.

Committing Officer.—Syud Zynooddeen Hossein, deputy magistrate of Muddehpooora.

Tried before Mr. D. Cmliffe, officiating sessions judge of Bhaugulpore, on the 17th November, 1856.

*Remarks by the officiating sessions judge.*—This case was tried with the aid of a jury\* at Bhaugulpore, on the 24th September, 1st November, and 17th November, 1856.

\* Heeralol.

Bhorosee Thacoor, and  
Gorachand Ghose.

The prisoners pleaded *not guilty*.

The circumstances of this case are so satisfactorily and clearly recorded in the abstract of the grounds of commitment by the deputy magistrate of Muddehpooora, Syud Zynooddeen Hossein, and are considered very creditable to that officer, they are transcribed for the Court's information.

"In a case of assault instituted in this court by one Bhugwan Sahoo, prisoners Nos. 1 and 2, defendants in that case, personally filed in the court on the 19th May, 1856, a '*farikhatee*' on common paper, written in current Hindee characters and dated 1st Sawan 1262, purporting to be a '*farikhatee*' given by the said Bhugwan Sahoo and signed by him, and witnesses accompanied with a *durkhast* signed by both, setting forth, that the

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complaint of Bhugwan Sahoo was entirely false, inasmuch as the alleged cause of complaint had been long since settled; and that they did not, at the time, owe him a single pice, as would appear from the *farigkhatee* they had filed, the witness to the execution of which they requested to be called for. They were accordingly summoned, and on examination stated, that they were not aware of any *farigkhatee* being given by Bhugwan Sahoo to the defendants, nor had they become witnesses to the document filed in the court. From this circumstance arose the cause of forgery now under commitment. On the 29th May, one of the defendants, named Shew Tahel, was put on his defence, and the witnesses he named were summoned and examined. In the mean time, at the instance of Bhugwan Sahoo, the *punch*, four in number, with the property deposited with them by the defendants, were sent for and examined. From their unanimous statements, it appeared that being duly appointed *punchaet* by both parties, and fully deliberating on the matter, they had come to the decision, that out of the aggregate demand rupees 76, the plaintiff (Bhugwan Sahoo) should remit to the defendants rupees 8, and that the latter should pay down the remaining sum, rupees 68, to the former, that the defendants having fully acquiesced in the award, had deposited rupees 24 in cash and certain moveable property with them to meet the demand, and which was payable on the plaintiff filing a '*razeenamah*.' This '*razeenamah*' was duly filed by the plaintiff, and the case decided by me.

"The fact, as appears from the investigation made in this case, is that the parties had for some time back carried on money transaction between themselves; that the defendants were indebted to Bhugwan Sahoo to the amount of rupees 76, when the bazar of Gunhurya was burnt down by a fire, and Bhugwan Sahoo's books, bonds and other documents burnt along with it, that the defendants taking advantage of this circumstance, with the assistance of the zemindar's omlah, forged this '*farigkhatee*' and filed it in the foudarry, with the double purpose of escaping from punishment and giving effect to the document, but when the witnesses, on whom they counted for proof, stated the truth, there remained no other expedient but that of making up the matter with the plaintiff, which they fully believed would absolve them from the more serious crime, with this view the '*punchaet*' was appointed, whose award has beyond a doubt proved the '*farigkhatee*' a fabrication. The document itself bears on its face, yet another proof of forgery, the names of Bhugwan Sahoo and the witnesses have written as if signed by themselves, without the agency of another party, and yet they are all illiterate people, who do not know how to sign their names. It is necessary here to remark, that the writer of the '*farigkhatee*' is the putwaree of the

village, and that he and tihseeldar have both given their depositions in favor of the defendants. Under these circumstances, I summoned the other defendants named Deendial and Purshad-dee Laul, the writer of the '*fwirighkatee*' also. The defendants all plead *not guilty*, but the charge, as enumerated in the abstract being fully proved against all and every one of the defendants, by the witnesses to the document itself, Nos. 1, 2 and 3, and witness No. 4, the plaintiff in the foujdary case, and witnesses Nos. 5, 6, 7 and 8, the arbitrators, and by the circumstances of the case as fully stated above, I committed the defendants to take their trial before the sessions court on the 30th August, 1856."

After the trial was completed, some doubt was entertained whether the indictment would stand, as the several charges were not brought home to the prisoners, none of the witnesses could depose to the fact of the fabrication of the forged document, nor were they present in court when it was filed before the deputy magistrate, though all the other circumstances were fully established. The trial was postponed, and further evidence in proof of the uttering and giving effect to a forged receipt, as specified in the second count was required. On the 1st November, 1856, the case came to a hearing, but was incomplete, as the deputy magistrate omitted to forward the requisite witnesses with his proceeding, dated 4th October, 1856. The trial was again resumed on the 17th November, 1856, when witnesses Nos. 18, 19 and 20, appeared and deposed, that prisoners Nos. 1 and 2, were both present in the deputy magistrate's court, when No. 1, filed the document with a petition, which was written by witness No. 20, at their particular request, and signed by the prisoners. No. 1, had then a paper in his hand written in Hindce, which he stated was a receipt he had obtained from Bhugwan Sahoo, who had complained against him, and it was written by No. 3, prisoner. These witnesses recognize the prisoners as being the persons implicated in this case, and No. 18, wrote the order on the petition, which bears the deputy magistrate's signature, as also the fabricated document, dated 19th May, 1856.

Prisoners Nos. 1 and 2, in their defence admit that they filed the document produced in court, with a petition before the deputy magistrate, it was written by prisoner No. 3, which is also acknowledged by him, and the subjoined facts will be proved by their witnesses, the arbitrators adjusted the claim for rupees 20, which was paid to Bhugwan Sahoo when they obtained the receipt in full of all demands.

The witnesses for the defence have failed to substantiate the pleas set forth by the prisoners, the evidence being conflicting. No. 13, committed perjury by stating, when cross-examined, that his testimony was a falsehood and the deposition of the

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other witness, No. 12, who was present with him when the money was paid, and the receipt written was correct. I have directed the magistrate to commit this witness on a charge of perjury.

The jury find the prisoners, Nos. 1 and 2, guilty on the 2nd and 3rd counts, and prisoner No. 3 on the 4th and 5th counts. I do not concur in the verdict, with reference to Nos. 1 and 2, but convict them on the 2nd count, and approve of their opinion as regards prisoner No. 3. They were sentenced accordingly.

*Sentence passed by the lower court.*—Each to seven years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners Nos. 1 and 2, confess to having issued the document, which they state was written by Purshady Lall, prisoner No. 3, by direction of the complainant Bhugwan Sahoo, witness No. 4. The prisoner No. 3, admits that he wrote the *farighkatee* as directed by Bhugwan Sahoo. The witnesses to the *farighkatee*, Nos. 1, 2 and 3, deny having seen it written, or having affixed their names to it, or authorized the writer, Purshady Lal, to write their names; and Bhugwan Sahoo denies having given such a receipt, or having authorised Purshady Lall to write it. The witnesses for the defence do not substantiate the statements made by the prisoners. They depose that Purshady Lal, by direction of Bhugwan Sahoo, wrote the *farighkatee*; and that Bhugwan Sahoo then signed, and made it over to Gosain Sahoo, son of the prisoner Deindial; but they do not state that the attesting witnesses were present, or by whom their names were written; and from the *farighkatee* it appears that the names of Bhugwan Sahoo, and of the attesting witnesses are written by the same hand as wrote the *farighkatee* itself.

The record shews that Bhugwan Sahoo charged the prisoner No. 1, and others with assault before the Deputy Magistrate of Mudhyppora, because he demanded payment of a debt due by prisoners Nos. 1 and 2, and by Gosain Sahoo. In answer to the charge, the prisoners filed the *farighkatee*, the cause of the present trial, stating that the prosecutor's claim had been settled. They also made a counter-charge of assault; and prayed that the witnesses to the receipt might be sent for, as able to clear them from the prosecutor's charge of assault, and to prove the receipt. The witnesses Nos. 1, 2 and 3, of this calendar attended, and denied all knowledge of the receipt; and, on being further questioned, stated that on their arrival at the Deputy Magistrate's station the parties had endeavored to adjust matters, the defendant engaging to give a bond for Rs. 48, in value, and Rs. 25 in cash, in payment of the prosecutor's claim, a bond to which effect was made over to the charge of witness No. 3, to be given by him to the prosecutor, Bhugwan,

on his filing a *razeenamah* as to his charge of assault. The prosecutor, who had been deprived of his money for a long time, insisted on immediate payment of his whole claim; thus the negotiation was broken off; and prisoner No. 1, took back the bond. The Deputy Magistrate directed the prisoners Nos. 1 and 2, to be put on their defence for committing a forgery, but intermediately, before that case was disposed of by the Deputy Magistrate, Bhugwan Sahoo and the prisoners made up matters with the assistance of a punchayet, with whom the prisoners deposited cash and other property, sufficient to liquidate their debt to the prosecutor to the amount of 68 Rs., to be made over to Bhugwan on his filing a *razeenamah* in the assault case. This he did file. As the fact of the *farikhatee* filed by prisoners Nos. 1 and 2, being a forgery, was proved, the Deputy Magistrate, while admitting the *razeenamah* as regards the prosecutor's charge of assault, directed that the charge of forgery should be proceeded with, and committed the prisoners for trial, on what we consider sufficient proof of their guilt. As the petition of appeal presented by prisoners Nos. 1 and 2, merely contains a repetition of their defence, it is unnecessary to notice it further. We reject the appeal on consideration of the evidence above reviewed.

With regard to the Sessions Judge's reasons for delaying the decision of this trial, we have to remark that as the prisoners Nos. 1 and 2, admitted before him that they had issued the document said to be forged, the adjournment of the case for further evidence on this point was obviously unnecessary.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND SUMUD ALI

*versus*

HAREA (No. 3,) HASUN ALI (No. 4,) AND MONO (No. 5.)

CRIME CHARGED.—1st count, wilful murder of Noah Gazee, brother of the prosecutor Sumud Ali; 2nd count, severely wounding Soodhee witness No. 1; 3rd count, assaulting and wounding Tara Bibee No. 2.

Committing Officer.—Mr. W. H. Henderson, magistrate of Chittagong.

Tried before Mr. R. Abercrombie, additional sessions judge of Chittagong, on the 4th February, 1857.

Remarks by the additional Sessions Judge.—The facts of the case, as deposed to by the prosecutor, and distinctly established

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Prisoner's  
appeal reject-  
ed. Remarks  
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by the evidence of several eye-witnesses, are simply these. On the 6th January last, corresponding with the 24th Poos, in the dusk of the evening, a squabble took place between Poocheea Bibee, wife of prisoner No. 5, and mother of prisoner No. 3, and Soodhee's wife, Tara Bibee, witness No. 2, about a fowl, the property of the latter, which had wandered into the compound of the prisoner's, on which account its leg had been broken by Poocheea Bibee. The dispute between these two women was soon taken up by the men, when an angry altercation ensued between the parties, both of whom reside close to each other. Noah Gazee (deceased) who appears to have taken a very slight part in the dispute, advised them not to quarrel. Prisoner No. 3, Haree, then struck Noah Gazee on the head a blow with a heavy bamboo in his hands. Noah Gazee fell backwards, never uttered a sound and died very early the following morning. Prisoner No. 4, Hasun Ali, struck Soodhee a blow with a bamboo, which felled him senseless to the ground, and prisoner No. 5, Mono, also struck him with a club. One of the female relations\* of

\* Moolka Bibee, witness No. 7.

deceased going up to raise him, received a wound on the shoulder from Mono, as well as another woman named Tara Bibee on the finger. The prosecutor, who is brother of the deceased, states, that

† Prisoner No. 3.

to strike Noah Gazee, and his

‡ Witness No. 1.

he heard Mono† order the other two prisoners, who are his sons, statement is confirmed by that of Soodhee,‡ who himself received a most severe wound on the head and fell down senseless. The other witnesses, however, affirm that they did not hear the order given. There were seven eye-witnesses to the above facts, whose evidence was taken by me, and tallies generally on all important points.

The medical officer, Dr. Beatson, examined the body of the deceased. He found the head swollen, and on removing the scalp, a quantity of extravasated blood between it and the bone, and the skull fractured. When he opened the skull he found a quantity of extravasated blood pressing on the brain in such a manner as to leave no doubt of its being the cause of death. He considers that a blow from the instrument shown him, viz. the bamboo, with which the deed is said to have been committed, was quite sufficient to account for the appearance of the head above described. Dr. Beatson also described the wound on the head of Soodhee as a very severe one, laying bare a portion of the bone, and probable to be a long time in healing.

Prisoner No. 3, in his defence, states that at the time of the quarrel he was lying inside the house sick with fever. Prisoner No. 5, pleads that he was not there at the time but came soon after. He and prisoner No. 4, both state that their house was surrounded by the prosecutor, who is at enmity with them, and

his relations, when a general row took place in which Soodhee was wounded. This is the substance of their defence, in support of which prisoners Nos. 4 and 5, bring three witnesses, who depose to having heard a great noise on the evening of the occurrence, and when they went to the spot, seeing Soodhee lying on the ground, but Noah Gazee had been taken away. Their evidence in fact tends to prove the case for the prosecution ; prisoner No. 3, summoned no witnesses.

The jury, with whose assistance I tried the case, convict prisoner No. 3, of the murder of Noah Gazee ; No. 4, of wounding Soodhee ; and No. 5, of being present on the spot and joining in the affray.

It is clearly proved by the evidence of the different witnesses for the prosecution, that the blow, which caused the death of Noah Gazee, was dealt by prisoner No. 3, who, though he calls himself only twelve years old, is, I should say, a lad of about sixteen. Although it would appear that enmity has existed for some time between the prosecutor and prisoner No. 5, I do not think that Harea (No. 3,) was actuated by motives of revenge on that account in committing the deed. The quarrel about the fowl was doubtless the cause. The weapon, with which he dealt the blow, which killed the deceased, was a very heavy one, and the provocation, which he received from Noah Gazee very inconsiderable ; still in the absence of all proof of intent on his part to commit murder, I would convict him of the crime of culpable homicide of an aggravated nature.

Prisoner No. 4, is proved beyond doubt to have taken a part in the commission of the crime, and to have wounded Soodhee very severely.

Prisoner No. 5, Mono, I deem the most guilty party. He is the father of the other two prisoners, and ought to have used his best endeavours to restrain them from committing the deed, instead of authorising it by his presence on the spot, and taking a part in it. Though only one witness (Soodhee) confirms the statement of the prosecutor that he gave the order to strike, I deem that the fact of his being on the spot with a club in his hand, with which he is proved to have inflicted several wounds, and thereby instigated his sons to the commission of the crime, is sufficient to convict him of being an accomplice.

The clubs produced in court have not been identified by the witnesses as those used by the prisoners, though they state that they resemble them very much. It is quite possible that in the dusk of the evening, when the crime was committed, they may have been unable to recognise the weapons, though there was light enough for them to distinguish the faces of the prisoners with whom they were intimate. The clubs were found in the house of the prisoners.

Altogether I consider the crime of such an aggravated nature, that the punishment I am authorized to inflict is too slight for

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its heinousness. I would convict prisoner No. 3, Hurea, of the culpable homicide of Noah Gazee and prisoner No. 5, Mono, of being an accomplice in the crime, and recommend them each to be sentenced to sixteen years' imprisonment in banishment with labor and irons. Prisoner No. 4, Hassun Ali, I would also convict of being an accomplice in the above crime, and of wounding Soodhee, and recommend him to be sentenced to seven years' imprisonment in banishment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This case comes up as a reference on account of the Sessions Judge proposing a greater measure of punishment than he is competent to award, and as an appeal against the convictions.

The evidence for the prosecution clearly shews that all three prisoners were engaged in the assault, and it is sufficiently proved that Harea struck Noah Gazee, the deceased, on the head, with a *lathee*. The civil surgeon deposes that the blow which fractured deceased's head and made the pressure on the brain, was the cause of death, and might have been inflicted by a *lathee*. The defence of the prisoners before the Magistrate and Sessions Judge is contradictory, especially as to the deceased Noah Gazee and the wounded man, Soodhee, having been struck by their own party, by blows aimed at prisoners. The witnesses called for the defence do any thing but substantiate the prisoner's innocence. The appeal is in a great degree a repetition of the defence. The plea that there is no proof of wilful murder, is futile, as there is no conviction of that charge; and the plea, in regard to the witnesses for the prosecution being connected with the prosecutor, has been duly considered in connection with the circumstances of the case, which were such that the evidence of persons living on the premises could not be rejected, merely on the ground here taken by the appellants. The enmity on account of disputes for land is admitted, and is apparent throughout; but it is not in any way shewn, nor is it averred, by the prisoners as the immediate cause of the assault.

With regard to the sentences proposed by the Sessions Judge we do not observe that there was any predeterminate intent to kill or do grievous bodily harm; but that the assault was one which, from a single fatal blow, resulted in a case of culpable homicide. We think, looking to the age of prisoner No. 3, on the one hand, and his having struck the blow, which caused Noah Gazee's death on the other, a sentence of seven years' imprisonment in labor and irons in banishment, will be sufficient for the ends of justice in his case; and that, a sentence of five years' imprisonment, on the prisoner, No. 4, brother of No. 3, and on No. 5, father of prisoners Nos. 3 and 4, in labor and irons in banishment, will be proper. We reject the appeal, and sentence them accordingly.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND KOODEE BIBEE

*versus*

GOLABDI SHEIKH (No. 1.) AND KATCHAI SHEIKH  
(No. 2.)

Jessore.

1857.

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Case of  
GOLABDI  
SHEIKH  
and another.

CRIME CHARGED.—1st count, riot attended with wounding and carrying off of Shukur Mahomed and wounding of Hurri Day, on the 3rd of March, 1856, corresponding with the 21st of Phalgun, 1262, B. S. ; 2nd count, riotously assembling with others in an armed body, and committing a breach of the peace.

CRIME ESTABLISHED.—Riotously assembling with others in an armed body and committing a breach of the peace.

Committing Officer.—Mr. E. W. Molony, magistrate of Jessore.

Prisoners acquitted; their identity not being satisfactorily proved.

Tried before Mr. E. Jenkins, officiating sessions judge of Jessore, on the 12th December, 1856.

*Remarks by the officiating sessions judge.*—The offence with which the prisoners are charged, occurred as far back as the 3rd March last, now full nine months ago. The time taken in investigating the circumstances, and committing for trial the accused has been unusually, and, in my opinion, unnecessarily long. After so long an interval, it is next to impossible that witnesses, unless tutored, can state with accuracy what they saw, and correctly distinguish it from what they have since heard.

It would appear that on the 3rd March last, a considerable mob, some having in their hands spears and *lattees*, approached the Duljoory indigo factory belonging to a Mr. Bell. The witnesses for the prosecution, mostly dependants of Mr. Bell, say that the object of the mob was to put a stop to a market established lately by Mr. Bell at his factory. Again at the local enquiries held by the assistant magistrate of Magoorah and the police, it appeared the villagers around the factory had been irritated in having their cattle and ploughs forcibly taken away to plough up some indigo lands. The factory people, about eleven, seeing the mob coming up, met them, as they say, hoping to dissuade them from resorting to violence. The first person who spoke to them was Shukur Mahomed, a ticca Khelasee at the factory. Among the mob were the prisoners, who, it is averred, struck and wounded Shukur Mahomed with a spear and carried him off wounded. One other party, wit-

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ness No. 8, is said to have been wounded, but at the time the wound was scarcely discernible by the police. The man, in his deposition, admits it was scarcely a prick he received.

Some witnesses, Nos. 16, 17 and 18, aver to having seen Shukur Mahomed lying wounded in the houses of different parties. Their evidence I consider quite untrustworthy. The assistant magistrate and the police were on the spot, and yet these witnesses admit they never attempted to inform them of the state of Shukur Mahomed and so obtain his release. Moreover it is not probable that the parties would have been admitted to see a person in a state of incarceration as the owners of the houses must have felt sure they would have informed against them.

The prisoners plead not guilty, and each in his defence an *alibi*, prisoner, No. 1, avers he went early in Phalgun to the Soonderbuns and did not return to his home till the end of Bysackh.

Prisoner, No. 2 pleads, he went to Serajunge in the end of Magh and did not return till the month of Jet. The usual description of witnesses is brought forward to substantiate these pleas, but their evidence is utterly unworthy of credit.

They scarcely know the names of the months and are quite wide of the mark when asked which was last month. Again their statements do not agree as to other particulars in the stories they desire to make out.

\* Moonshee Gyasudin,  
Dwarkanath Paul,  
Seroop Chunder Mojomdar.

The case was tried with the aid of jury\* under the provisions of Section 3, Regulation VI. 1832. They find a verdict

of "*not guilty*."

I do not coincide in this verdict, as I see no reason for doubting that a riot did occur, in which the accused were present. Convicting them therefore on the 2nd count, I sentence the prisoners, Golabdi Sheikh and Katchai Sheikh, to 2 (two) years' imprisonment without irons from the 12th December, 1856, and to pay a fine of Rupees 25 each on or before the 12th January, 1857, or in default to labor until the fines be paid or the term of their sentences expire.

The attention of the magistrate will be called to the provisions of Section 4, Regulation IX. 1796, with reference to the absence of several witnesses named in the calendar. The nazir has not supplied the original returns, nor are the parties in attendance, who were deputed to summons the witnesses now absent. It is not the first time this irregularity has been brought to the magistrate's notice.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The pleas of counsel in appeal, are; that the evidence of the eye-witnesses has been rejected by the Sessions Judge on the first count, which especially involved the

identity of these two appellants; that the same evidence must be deemed insufficient and unsatisfactory as to the same identity in regard to the second count; and this the more especially as the evidence is in itself contradictory, inconsistent and opposed to the probabilities of the case; contradictory more particularly as to some witnesses speaking to the presence and identity of prisoners, while they differed as to the manner in which the spear was used by Golabdi, some saying it was thrown, others that it was struck without being thrown; and inconsistent and against probability, because the witnesses all say that the appellant's party was from 150 to 250, and the prosecutor's only 10 or 12; that still the object for which all the witnesses aver the prisoners to have come, viz. to destroy a *hât*, was never attempted, although the ten or twelve men of prosecutor's party did not and could not offer any opposition; further, that it was very improbable that ten or twelve men should stay, as the witnesses say they did, at a trifling distance in the face of so much larger an armed force of enemies; moreover, that nothing is shewn in any way supporting the main point of the evidence, (which purports to give a true detail of continuous acts of a riotous assembly,) viz. the wounding and death of Sookoor.

We have carefully perused the whole of the evidence for the prosecution, and consider it fairly open to the objections above taken by the Counsel for the appellant; and that it is insufficient, with reference to the specific facts noticed above, to warrant it being accepted to establish the identity of the two appellants, as the parties guilty on the second count; that identity having also been distinctly considered not proven as to the first count, by the sessions judge. We direct the immediate release of the prisoners.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND BOWNA

*versus*

PAIKA.

CRIME CHARGED.—Wilful murder of Nurwa, father of the prosecutor.

Committing Officer.—Captain J. S. Davies, senior assistant commissioner of Lohurdugga.

Tried before Captain W. H. Oakes, deputy commissioner of Chota Nagpore, on the 27th January, 1857.

Remarks by the Deputy Commissioner.—The prisoner is

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GOLABDI  
SHEIKH  
and another.

Chota  
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Prisoner's  
sentence modified; malicious intent to kill not being proved. Remarks on absence of *post-mortem* examination.



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PAIKA.

charged with the wilful murder of his half brother Nurwa, and has confessed both before the police and in the presence of the senior assistant, and also pleads guilty in this court.

It is established by the evidence of the witnesses,\* that on the 30th October, 1856, at the time of the *Sohrye* (a festival during which the Coles of this part of the country drink intoxicating

\* No. 1, Hurbur,  
2, Jengha,  
3, Mussumat Dooloo.

liquors to great excess) the prisoner and his brother had been drinking "*handeea*" in the house of the deceased. In the afternoon the two brothers came out of the house and were quarrelling with each other, when the prisoner, who was much intoxicated, struck the deceased with a *lattee* once on the head and twice on the body, from the effects of which, Nurwa died immediately. The prisoner did not attempt to run away, and was apprehended by the witnesses, Kooreya No. 4, and Gobinda No. 5.

The jury\* find the prisoner guilty of wilful murder. In this finding I agree.

The prisoner's guilt does not seem to me to merit capital punishment, as there was not any previous enmity between the parties, and I would beg therefore to recommend that the prisoner should be imprisoned in transportation for life with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court, having perused and considered the record in this case, remark that they do not think it in any way proved that, although deceased died from the blows given by prisoner, there was any malicious or deliberate intent to take the life of the deceased. The witness, No. 1, gave a very confused account of the affair before the Deputy Commissioner; but if it is correct it might be supposed that the parties exchanged blows. It is quite clearly proved, however, that the prisoner and deceased were half brothers, and had no quarrel or enmity of any kind; that the occurrence was at the period of a Cole festival, when these people drink to excess; and that the prisoner inflicted the blows on deceased in a state of excitement from drink, without any pre-meditation, and with a stick which happened to be in his hand at the time. We therefore think a sentence of seven years' imprisonment, with labor and irons, sufficient.

We observe that no *post mortem* examination was made by the civil surgeon or other competent medical officer. This should invariably be done where practicable, or the reason given why it is not done, in order that the best available evidence of the real cause of death may be considered by the Court.

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\* Ukhoury Imrit Lal, Mokhtar.  
Lalla Gujraj Singh, ditto.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

TEENKOWREE BAGDI (No. 2,) AND CHEENEEBAS  
BAGDI (No. 3.)

Hooghly.

1857.

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Case of  
TEENKOWREE  
BAGDI  
and another.

Prisoner, con-  
victed. Re-  
marks on the  
Law in respect  
to dacoity with  
murder.

CRIME CHARGED.—1st count, dacoity with murder on the night of the 25th April, 1852, in the house of Ramcoomar Biswas of Badpore, thannah Selimabad, zillah Burdwan; 2nd count, dacoity with murder on the night of the 8th March, 1854, in the house of Callypersad Dan of Jolekool, thannah Dhunyakhalee, zillah Hooghly; 3rd count, dacoity on the night of the 5th July 1854, in the house of Bungsee Doss Kansaree of Khanpore, thannah Dhunyakhalee, zillah Hooghly; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seker Roy, deputy magistrate under the commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. R. P. Harrison, officiating sessions judge of Hooghly, on the 9th February, 1857.

*Remarks by the officiating sessions judge.*—The prisoners are charged with three specific dacoities, two of them attended with murder and with having belonged to a gang of dacoits.

The prisoner No. 2, Tincowree, pleads guilty to all the charges.

The prisoner No. 3, pleads *not guilty*.

The first dacoity occurred in the village of Badpore, thannah Selimabad, zillah Burdwan, on the 25th April 1852, and was attended with the murder of Nubocoomar Biswas, brother of Ramcoomar Biswas, in whose house the crime was committed. The occurrence was reported early the next morning to the magistrate and enquiries were at once made by the police which terminated in three persons being sent in charged with the crime, who were committed to the sessions, by which court two were acquitted. It does not appear from the record of the case which has been sent to this court by the committing officer, whether the third was convicted or released. Witness No. 3, Dookhiram Haree, approver, confessed to this dacoity on the 28th of September last, before the deputy magistrate and implicated both the prisoners. He has deposed to the same effect before this court, but has stated here that he himself wounded one of the men of the house with a spear, which he did not mention in his confession, and he has named one person not mentioned in his confession, and omitted the names of five

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and another.

others whom he then named. The evidence of this witness is strongly corroborated by that of witness No. 4, Kishto Chunder Bagdee, chowkeedar of the village, who deposes that he recognised both the prisoners and others amongst the dacoits as they were leaving the scene of the dacoity. It is proved by the record (No. 5, of No. 185,) that this witness mentioned the names of both prisoners, amongst others whom he said he had identified, on the day after the dacoity when examined by the darogah, and the report of the latter shews that the prisoners were then seized, though as there was no evidence against them beyond the chowkeedar's recognition, they were not counted as apprehended.

The second dacoity was committed on the 8th of March 1854, in Jolekool, thannah Dhunyakhalee in this district, and was also attended with murder. The approvers, witnesses, Nos. 1 and 2, confessed to this dacoity on the 3rd and 14th May, and implicated the prisoners amongst those who were concerned. They have deposed to the same effect before this court with some discrepancies in the names of the parties engaged which are not, however, sufficient to invalidate their testimony. The evidence of the witnesses is corroborated by the statements of several of the inhabitants of surrounding villages made to the darogah on the 22nd March, 1854 (page 77 of record No. 33) to the effect that prisoner No. 2, and witness No. 2, with several others were seen on the night of the dacoity assembled together in a *maidan* south of the village of Husti, and that a goat was there killed by them and poojah performed.

The third dacoity was committed at Khanpore on the night of the 5th July, 1854. Witnesses Nos. 1 and 2, confessed to having been engaged in it on the 2nd and 14th May, and implicated both the prisoners and they deposed against them before this court. Their evidence is corroborated by the confessions of Dino Haree (who was apprehended shortly after the occurrence) recorded by the darogah on the 7th and before the magistrate on the 8th of July, 1854, in both of which confessions the prisoners and witnesses Nos. 1 and 2, were implicated (pages 17, 18 and 21 to 26 of record No. 87.) Witness No. 1 and prisoner No. 3, were arrested but released by the magistrate (page 182.) witness No. 2, and prisoner No. 2, were reported by the darogah on the 14th July, as having absconded (page 97). The three approver witnesses denounce both prisoners as belonging to a gang of dacoits.

Witnesses Nos. 5, 6, 7 and 8, have deposed that the confession of prisoner No. 2, was voluntarily made. The prisoner No. 2, confessed to the three specific acts of dacoity with which he is charged, implicating the prisoner No. 3, and to having belonged to a gang of dacoits, and admitted that he had been engaged in ten other dacoities. He has adhered to those confessions before

me and makes no defence. The prisoner No. 3, says nothing in his defence, and declines to have the witnesses he had named to character examined. I consider the guilt of both prisoners fully established, that of No. 2, Tincowree Bagdee by his own voluntary confessions, and that of prisoner No. 3. Cheeneebas Bagdee, by the direct evidence against him. I convict both prisoners of having been accomplices in the three dacoities with which they are charged and of having belonged to a gang of dacoits, and recommend that they be sentenced to transportation beyond sea for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Tincowree Bagdee has confessed throughout to the crimes charged, and his confessions are corroborated by the evidence of the approver witnesses, and by independent evidence as to the specific dacoities. Cheeneebas Bagdee is proved guilty of belonging to a gang of dacoits. The confessions of the approver witnesses taken prior to his apprehensions, are consistent, and agree with that of Tincowree. The evidence of the approver witnesses is supported on the 1st count, by the testimony of witness, No. 4, both now, and by his statement to the police in 1852, immediately after the dacoity, as to recognition of witness No. 3, and of the two prisoners. The statements of the approver witnesses in regard to the second count is supported by Jadoo Haree's deposition at the Sessions on 4th April, 1856. We convict the prisoners under Act XXIV. of 1813; and sentence them to imprisonment in transportation for life. We observe that both the dacoities charged on the 1st and 2nd counts, were attended with murder. We consider that, with reference to the prevalence of dacoity, and to the impunity with which the crime, even accompanied with murder, seems to have been committed, notwithstanding the provisions of clause 1, Section 4, Regulation LIII. of 1803, the Commissioner and other committing officers should submit the best available independent and trustworthy evidence of the murder, and of "aiding and abetting, when such murder was committed," irrespective of the depositions of the approver witnesses and of the ordinary authenticated records.

We further observe that in the Commissioner's abstract of this case, he refers to prisoners (*both*) being mentioned in Jadoo Haree's statement of 4th April, 1856; but we find that only Cheeneebas was so.

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Case of  
TEENCOWREE  
BAGDI  
and another.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND GOBURDHUN SHEIKH

*versus*

NUNDO DOME (No. 12,) SUTTROGHUN CHOWKEEDAR (No. 13,) LUCKHAN DOME CHOWKEEDAR (No. 14,) BHOBU ALIAS GOPAL METEA (No. 15,) HARADHUN METEA (No. 16,) AND GOBURDHUN METEA (No. 17.)

Beerbhoom.

1857.

April 23.

Case of  
 NUNDO DOME  
 and others.

Prisoners convicted. Attention called to Sec. 2, Regulation XV. of 1814.

CRIME CHARGED.—1st count, Nos. 12, 13 and 14, dacoity attended with murder of Ruhim Allee, brother of the prosecutor Goburdhun, and plunder of property valued at Rs. 66-9-6; 2nd count, Nos. 12, 13, 15 and 16, receiving plundered property knowing the same to have been obtained by committing the above dacoity; 3rd count, No. 17, privy to the above dacoity. Committing Officer.—Mr. R. J. Wigram, officiating magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, sessions judge of Beerbhoom, on the 7th February, 1857.

*Remarks by the sessions judge.*—On the 4th October, 1856, 19th Assin, 1263, a dacoity took place in the house of the prosecutor, and property to the amount of upwards of 60 rupees was carried off. He made his escape with his family, except one, who was afterwards found mortally wounded, and another slightly so.

The prosecutor went for assistance and returned with three men, who made their way into the house while the dacoits were in it; one of them, the chowkeedar of the village, states that he seized prisoner No. 12, but being struck senseless, was forced to let him go: he also slightly wounded another man: prisoners Nos. 12 and 14, only were recognised by this man; of the other two, who came to assist, one was wounded, the other escaped unhurt.

After the dacoits had gone, the rest of the villagers came up, they found the wounded men, and did what they could for them and sent them to the police.

The darogah came the next day and made the usual enquiries; from the information given him by the wounded men, he arrested prisoners Nos. 12, 13 and 14; the mortally wounded man died that night, having stated that he recognised "Shamah," who gave him his death-wound, and three others, "Brijo Dome," "Kangal Chowkeedar" and prisoner No. 14; the body

was sent into the station, and the civil surgeon has given his evidence, that the wound received was the cause of his death.

Prisoner No. 12, as above stated, was arrested on the deposition

Witness No. 1.

on being apprehended in conjunction with the next prisoner No. 13, they shewed where they had hidden a small *pettarah*, the property of the prosecutor. He confessed before the police, and partially so before the magistrate. Before me he denied, stating that his confessions had been forced from him; he pleaded *alibi*, but his evidence could say nothing in his favor. I consider this man guilty of dacoity, attended with murder.

Prisoner No. 13, was arrested on the implication before the police by No. 12. His confession of the receiving the stolen property before the magistrate is merely that he knew where it was, and he also confesses that he heard of the dacoity being about to take place. Before me he denied, pleading *alibi*, and stated that his confessions were extorted. His witnesses gave him a fair character, but I see no reason for doubting his confession, supported as it is by the fact of his shewing the property in conjunction with prisoner No. 12, I consider him guilty of being privy to the dacoity.

Prisoner No. 14, was recognised at the dacoity, he is said to

Witnesses Nos. 1 and 2, and the deceased Rahim Allee.

be one of those that struck the deceased, but not his death-wound. This man has denied, and before me stated that he was on duty as a chowkeedar, and that the case has been brought against him through enmity, but his defence is not well backed up by his evidence; I see no reason to doubt the evidence against him, and consider him guilty of dacoity attended with murder.

It will be remembered that one of the men, who entered the house to assist the prosecutor, stated that he had slightly wounded one of the dacoits; a reward for the apprehension of the parties having been offered, a burkundaz of a neighbouring

Witness No. 24.

district being, as he says, put on the alert by his darogah, heard that prisoner No. 15, (employed on the railroad) had been hurt, and had not come to his work as usual. The burkundaz went first in disguise to the place where the man was staying, viz. the house of prisoner No. 16, and reported what he saw to his darogah, who sent his mohurrir with him: they searched the house and found a great quantity of property, and arrested prisoners Nos. 15, 16 and 17, being the men living in the house at the time. A part of the property appears to belong to the plaintiff in the case and a part to be a portion of some taken in another dacoity now under trial.

Prisoner No. 15, arrested as above; he has a slight cut on

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and others.

his arm apparently a sword-cut; when first caught he tried to put the blame of the possession of the property on the other defendants. He now states himself to have been at the house of prisoner No. 16, by invitation; that he cut his arm with a broken bottle, and that he had nothing to do with the property found. I do not think there is sufficient evidence for conviction in this case, but the man is under trial in another case of dacoity not yet completed.

Prisoner No. 16, arrested as above; it was in his house that the property was found; the man is himself a notorious bad character, even his own evidence going against him. I consider him guilty of possessing property acquired by dacoity. This man is also in the other dacoity case.

Prisoner No. 17. This man was also at the house of prisoner No. 16, where the property was found. He is no doubt a bad character, but there is not, I think, sufficient proof against him in this case for conviction. He is, as well as prisoners Nos. 15 and 16, under trial in another case not yet committed.

As noted above in their separate places, I convict prisoner Nundo Dome No. 12, and prisoner Luckhan Dome Chowkeedar No. 14, of being accomplices in a dacoity attended with the murder of Ruhim Allec, and recommend that they be sentenced to imprisonment for life in transportation.

I convict prisoner Suttroghun Chowkeedar, No. 13, of being privy to the dacoity attended with murder, and would sentence him to five years' imprisonment, with labor in irons.

I convict prisoner No. 16, Haradhun Metea, of having possession of property acquired by dacoity, he being of notoriously bad character, and would sentence him to seven years' imprisonment with labor in irons.

I acquit prisoner No. 15, Bhubu *alias* Gopal, and No. 17, Goburdhun Metea, but think that the magistrate had sufficient grounds for committal.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Prisoner No. 12, Nundo, was recognised by Sreeram chowkeedar at the time, and he has been throughout mentioned by him as having been so. A *petarra*, identified as prosecutor's, was found with the prisoner, and he has in no way satisfactorily accounted for its production by him. This prisoner confessed privy to the dacoity at the police, and stated that the *petarra* was shewn to him as acquired by dacoity by prisoner, No. 13. He denied before the magistrate, the confessions made to the police, but admitted that Suttroghun, prisoner No. 13, had shewed him the *petarra*. At the Sessions, this prisoner denies his statements both at the police and before the magistrate. None of his pleas in defence are substantiated by his witnesses.

Prisoner No. 13, Suttroghun. His confessions and denials and inability to substantiate his defence are similar to those of prisoner, No. 12, and the fact of the *petarra* identified as prosecutor's, being with this prisoner and prisoner No. 12 is in no way accounted for by him.

Prisoner No. 14, is named throughout as present at the dacoity by the witnesses Nos. 1 and 2, and by Ruhim Ali, the deceased. This prisoner in no way substantiates any defence, for though one witness says that he met this prisoner *about* midnight <sup>1</sup> a *cos* from the locality of the dacoity, and another that he met this prisoner when the witness was going his round about that time, there is not that precision of time, or amount of distance proved, which would suffice for the plea of *alibi*, in the face of direct testimony to his being a participator in the dacoity charged.

Prisoner No. 16, has been convicted by the sessions judge on the 2nd count. Property from No. 2, to No. 28, duly identified as prosecutor's, was found with him, and he has in no way proved his plea that a portion was his own, and a portion placed with him by prosecutor and the police. This prisoner is, we observe, under trial on another charge. The sessions judge should not therefore, with reference to Section 2, Regulation XV. of 1814, have passed a separate sentence in this case. But we do not consider this sufficient to vitiate the conviction.

The Court observe that there is no trace of cause of enmity, or other ground for supposing that there has been a false or malicious charge against the prisoners.

The Court therefore concur in the convictions by the sessions judge, and sentence the prisoners as proposed by him.

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Case of  
NUNDO DOME  
and others.



## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

## GOVERNMENT AND BEHAREE SINGH RAJPOOT

*versus*KOONJBEHAREELALL KAETH DAROGAH (No. 1.)  
NUGWAH HUJJAM (No. 2,) AND CHUMMUN KA-  
HAR CHOWKEEDAR (No. 3.)

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CRIME CHARGED.—1st count, No. 1, giving order to torture Beharee Singh; 2nd count, giving order to assault the said Beharee Singh; 1st count Nos. 2 and 3, having tortured Beharee Singh; 2nd count, having assaulted the said Beharee Singh; 3rd count No. 1, being an accomplice in the torture and assault of Beharee Singh.

Committing Officer.—Mr. M. Brodhurst, officiating magistrate

Case of beating and alleged torture, by a police darogah. Prisoner convicted and sentenced as proposed by the sessions judge. Application for review rejected, after hearing counsel.

of Behar.  
Tried before Mr. T. C. Trotter, officiating sessions judge of Behar, on the 14th January, 1857.

*Remarks by the officiating sessions judge.*—The case, as stated by the prosecutor, is to this purport; that on the 1st of Assin, on a Monday, the Moonshee of thannah Gya came to search his house, in consequence of a charge of theft having been brought against him by one Ramlall; that some few articles of property having been discovered, which were claimed by Ramlall as his, he was carried off to the thannah. It is then affirmed that, on his reaching that place, the darogah Koonjbehareelall, prisoner No. 1, ordered the prisoners Nos. 2 and 3, or Nugwah and Chummun and one Dorbijah to tie him; that Chummun having tied his hands with an "*angocha*" or handkerchief, and having inserted a *lattee* or stick between his hands and feet, he was thus bound thrown on the ground, and beaten with a shoe, which the darogah aforesaid gave to the prisoners Nos. 2 and 3, for the purpose. The darogah it is said ordered the beating to be very severe, and in consequence three or four hundred blows with a shoe, were administered, when the magistrate happened to drive up to the thannah. On that officer's departure the darogah said, Confess to the theft; and because he would not do so, the darogah ordered him to be swung. Nugwah and Chummun having taken the stick, one by each end, dashed him violently against the *chowkat* or frame of the door, until he was senseless; that he could not complain to the magistrate on his appearance at the thannah as he was not permitted to move, and that another cause for the darogah's having ordered him to be beaten was the fact of his having given evi-

dence in the case of Nujjoo, in which the darogah received a bribe from Balgobind the defendant therein.

Witness No. 1, "Ukbar Ally" now a jemadar of police at Daoodnuggur, formerly a jemadar of chowkeedars, attached to the town of Gya, deposed that about

four months ago, the date, or the month he does not remember, he was present at the search made in Nusubun's and "Beharee's" houses; and that in consequence of property being found, which the plaintiff Ramlall recognised as his, these two persons were taken to the thannah by the mohurrir; that he went to see the search made, because their houses were in his beat; and for the same reason he accompanied them to the thannah; that, on his getting there, the darogah immediately called for "Chummun" a dependant of his, and ordered Beharee to be tied, which to the best of his recollection was done by Dorbijah; that both hands and feet having been bound with a cloth, belonging to Beharee Singh, a stick was introduced between them; and under the orders of the darogah, "Koonjbehareelall," who gave the shoe, five or ten chowkeedars, whose names he does not know, beat Beharee with a shoe on the hinder part; and two men dashed him against the door of the thannah, having laid hold of the stick by each end, that he does not remember whether Chummun and Nugwah took a part or not; that he left before the magistrate's buggy arrived, but was present for nearly half an hour during which this beating took place.

Witness No. 2, "Nuzzur Ally," deposes that seeing a crowd of people at the thannah, on Monday the 1st of Assin, he went there, and from the road

where he was standing, and at a distance of one bamboo, he saw the two prisoners "Nugwah" and "Chummun," who had each hold of a stick at different ends, swinging Beharee and striking him against the frame-work of the door of the thannah; that this beating took place by the order of the darogah, "Koonjbehareelall," during the half hour he remained, and that he was enabled to recognise Chummun and Nugwah from having known them before; that no one else beat Beharee at that time, and he did not see who tied him, as that had been done before he reached the thannah. But he saw Beharee beaten till he was senseless.

Witness No. 3, Chotoo Koomar says that, on the 1st of Assin, the day he does not remember, he was returning

from the Ramsilla hill, and having come to the thannah he saw from the road, at a distance of about 4 yards, that, by the orders of the darogah, the prisoners Nos. 2 and 3, were beating with a shoe Beharee Singh who had been tied up by the hands and feet;

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that Beharee was thus beaten on the hinder parts and loins for a quarter of an hour while he was there, and that he then went away, not having seen Beharee dashed against the door; that the darogah gave the order that Beharee should be severely beaten, and that the shoe was a heavy one.

Witness No. 4, Mohun Singh, deposes that on the 1st of

Wit. No. 4, Mohun Singh Rajpoot.

Assin on a Monday he was returning from the hills, thannah. Having stopt he saw, from the road, that Chummun by the order of the darogah bound Beharee with a cloth by the hands and feet, and having introduced a stick between them, that the darogah gave a shoe to Nugwah and Chummun and desired them to beat him well, that they did so until the magistrate's buggy arrived; and immediately it drove away, that the same two men, by the order of the darogah, swung Beharee and dashed him against the door of the thannah.

Witness No. 5, Kewul, states that on the 1st of Assin he

Wit. No. 5, Kewul Kuhar.

was coming from his house, and seeing a great crowd at the thannah he stopt and saw Beharee Singh being beaten by Nugwah and Chummun by the orders of the darogah; that Beharee was afterwards swung and dashed against the door of the thannah, and beaten until he was senseless; that he did not see who bound Beharee, as this had been done before he reached the police station; but that he was both beaten and dashed, as described, before and after the magistrate came to and left the thannah, and that the orders of the darogah were that he should be well beaten, and indeed that the darogah exclaimed that if he died, it would not signify.

Witness No. 6, Nujjoo, deposes, in like manner, that seeing

Wit. No. 6, Nujjoo Oytham.

a crowd at the thannah he went there on Monday the 1st of Assin, and saw, from the road at the distance of a *russee* that the darogah was causing Beharee Singh, who was bound, to be beaten, and that Nugwah and Chummun and Nadir, all three, were beating Beharee Singh with a shoe, and that the two first also dashed Beharee against the door and that he saw Ukbur Ally at the thannah.

Witness No. 7, Doctor J. B. Allan, has deposed that on

Wit. No. 7, Doctor J. B. Allan.

examining Beharee Singh he found that from the snall of the back down to, and below the buttocks, the parts were much swollen, and the skin highly discoloured the result of a beating with a flat instrument such as a shoe. But from the man's not being able to assume an erect position there is no doubt also, but that the bones received a severe concussion. It is also stated by this witness that the injuries, in his opinion, must

have resulted from something more severe than the beating by a shoe, and it is very probable that they were occasioned, in part, by his having been dashed against a door; that for upwards of a week Beharee was unable to leave his bed, and that for nearly three weeks he was under treatment from the injuries received.

The witnesses from Nos. 8, to 14, Kalay Khan, No. 8, Hanoman Singh, No. 9, Mahomed Jan, No. 10, Inderpal Singh, No. 11, Bhekdoobey, No. 12, Uhmud Khan, No. 13, and Daem Ally, No. 14, all state that they heard Beharee Singh had been beaten at the thannah; but

Nos. 9, 12, 13 and 14, further depose that the darogah had beaten Beharee, and Nos. 10 and 12 or "Mahomed Jan and Bhekdoobey" affirm that they heard of the beating from Beharee Singh at the thannah.

The defendants deny their guilt, but No. 1, Konjbehary Lall, through his mooktear, states in his defence that it is not likely, in such a place, or when the mohurrir as is shewn investigated the case, he should have given any such order for the beating of Beharee; that the case is entirely concocted by his enemies, and through "Keramut Ally," the present darogah of the city; that if there had been any beating Beharee himself, not being senseless, would have complained on the magistrate's going to the thannah, or some of his relations would; that, in the original petition which was given by Beharee he spoke of his having been beaten by Chummun, Nujjoo and Dorbejah, without any reference to their being chowkeedars; and in his deposition in the magistrate's court he takes the names of Ukbur Ally and Kishun Lall and Daem Ally and Kalay Khan and others as witnesses, having made no mention of them in the petition; and when these men failed to give eye-testimony in the magistrate's court he has omitted them entirely in his deposition before the sessions; that if Ukbur Ally's statement be true that the plaintiff Beharee was bound with his own cloth, that he would certainly have mentioned it; and that Ukbur Ally mentions that Beharee was bound by Dorbejah, whereas Beharee deposes to such having been done by Chummun; that there is no mention of the amount of beating in the court of first instance, though such is distinctly alluded to in the sessions, and none of the witnesses state that 3 or 400 blows were administered; that in the criminal court Beharee speaks of his having been beaten by four persons Chummun, Nugwah, Nujjoo and Dorbejah. In the principal sudder ameen's, he says, he does not know the names of those who struck him;

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and in the sessions he takes the name only of Nugwah and Chummun; that Ukbur Ally says he left the thannah before the magistrate arrived, whereas Nujjoo deposes that Ukbur Ally appeared before the magistrate; that Nujjoo in the foudjary court took the name of Nadir Ally only as the person, who beat Beharee, and in the sessions he recognises Nugwah and Chummun also; and states that he was there when the magistrate arrived, and yet that officer did not see the beating, which he and others have described, or why did not Nujjoo, or "Kewul" tell the magistrate of what had occurred? that "Nuzzur Ally" stated in the foudjary court that he did not know the names of the chowkeedars, who beat Beharee, or why they did so, and in the sessions that he saw Chummun and Nugwah beating Beharee for half an hour; and that on the 22nd September in the magistrate's court he made no allusion to Beharee's being senseless or to the magistrate's having come to the thannah. It is singular therefore that the Magistrate should have placed force on such testimony as his or Ukbur Ally's; that Chotoo speaks of the swinging of Beharee, as if he had been bound "*mohly dunda*," i. e. with his legs placed over his neck whereas the others talk of *gala lattee*; that it was not possible for any person who was thrown down, and so bound to have been seen from the road; that if there had been any beating, such as has been sworn to, the skin would have been broken and the bones fractured, or the head would not have escaped from injury; and that if there had been any stick used there must have been marks, arising from the manner in which Beharee was tied, that it is wonderful, if Ukbur Ally was present, he should not have recognised who beat Beharee with the shoe, or did not remember whether Chummun, or Nugwah took a part; that Dorbejah has been released, though Ukbur Ally has deposed he tied Beharee's hands; and although Mohun says the *patuk* or dashing against the door took place after the magistrate went away, yet Ukbur Ally has deposed that it was before. Had Mohun been there he would have told the magistrate that "Kewul's" deposition in the magistrate's court regarding the condition of Beharee from the beating, and the arrival of the magistrate is quite contrary to his statement at the sessions; that the plaintiff Beharee went to the magistrate's *cutchery*, under the care of Khodabuksh Burkundaz and was able to walk about there for two days, and daily walked home at night from the hospital, which can be ascertained from enquiry and the deposition of Khodabuksh aforesaid: that Ukbur Ally's spite on the present occasion, arises from his being disappointed of the jemadarship of thannah Gya, through Konjbeharee's influence, and Nuzzur Ally in like manner from the reports made of his neglect as a chowkeedar; that Kewul was imprisoned in consequence of reports made through the thannadar,

and he has thus deposed, because he was reported to be a bad character; that the magistrate has stated that Ramllal prosecuted his claim for theft on the 16th of September, and that on the 15th of that month a search was made; therefore this fact alone will shew the incorrectness of the remarks made by that officer; that there are other discrepancies in the papers which have been submitted by him, and in fine that there are differences expressed even by the plaintiff, and Ukbur Ally as to the cause of the beating.

In the magistrate's court the same defendant attempted to explain away the marks on the body of Beharee, by saying that in the rainy season people are frequently covered with spots such as were seen on Beharee, and that his endeavour not to be able to stand erect was a sham; and in answer to a question put by the magistrate, regarding the evidence of "Kalikan" Sowar, from which it seemed the cries were heard proceeding from the thannah, the darogah replied that this was no proof as to what person was beating the man, for people beat their servants, and that there might have been some such beating near the thannah.

The defendant No. 2, or Nugwah, pleads in his defence, through his agent, that when Beharee's answer was taken before the principal sudder ameen he did not, at that time, mention the name of any one who had beaten him, nor does Ukbur Ally mention the name of Nugwah; that Nuzzur Ally on the 22nd of September has stated that the chowkeydars were beating Beharee and two men dashed him against the wall; but he did not know the names of the chowkeydars; and in the sessions court he takes the name of Nugwah, having known him before. In like manner "Kewal;" and Mohun also on the 23rd of September did not take Nugwah's name, though he does so in the sessions court; that in fine as Ukbur Ally did not see Nugwah and Chummun at the time of the assault, therefore how could the other witnesses? that the witnesses will prove that from the month of Assar, Nugwah never went to the thannah.

The defendant No. 3, "Chummun," pleads that as Ukbur Ally does not take his name, therefore no confidence can be placed on the evidence of other witnesses, who merely were stationed on the road, and state what they saw from that place, that the case is got up by disaffected parties, for the purpose of bringing him and others into trouble, and that his witnesses will prove that he was at his *muhallah* in Kishen Dwarka.

The witnesses for the defence, Nos. 16 and 17, or "Khodabux" the burkundaz, who took Beharee Singh to the magistrate's court from the thannah; and Omanyall Naib nazir of the Magistrate's court were stated to have colluded with Beharee, and were therefore not heard at the request of the defendant No. 1.

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Singh there, and that there was no beating before him: that he saw a great crowd on the road, and this he saw while he was standing in the thannah; that he had no particular reason for going to the thannah; but he heard that the beating actually did occur and that the case is a true one; that it is current throughout the city that such is the fact.

Nos. 18, 19 and 20 or Chummun, Adhun and Rummun say that they went together to the thannah, on the day in question, 1st Assin, to make enquiries regard-

Wit. No. 18, Chummun Singh, Rajpoot.

" " 19, Adhun Singh, Rajpoot.

" " 20, Rummun Singh, Rajpoot.

ing their cattle, which had been lost; that they saw Beharee there, and could see from within that there was a crowd upon the road: that on the occasion of the cattle being lost there was no information given to the thannah, neither was any record made in the books of their having gone there on the day now referred to.

No. 21 or Blyhurn merely states that he went to the

Wit. No. 21, Blyhurn Singh, Rajpoot. thannah, on the 1st of

Singh from the road, though he, Beharee Singh, was in the thannah, and that there was no beating before him.

Nos. 22, 23 and 26, Bhola, Runglall and Jaimungul state

Wit. No. 22, Bhola Roy, Rajpoot.

" " 23, Runglall Singh, Rajpoot.

" " 26, Jaimungullall, Kaeth.

that they went to the thannah and stopt there, because Adhun Singh, No. 19, called them; but while the first deposes that he left it at once, the 2nd or Runglall affirms that he remained some time and that Bhola stayed with him.

Nos. 28, 29, 30, 31 and 32 or Doudhoo, Kunhye, Sheywak,

Wit. No. 28, Doudhoo Panday Dhamee.

" " 29, Kunhye Kuhur.

" " 30, Sheywak Koormee.

" " 31, Boodhun Koormee.

" " 32, Bundhoo Hujjam.

Boodhun and Bundhoo all depose that they saw Nugwah on the Ramsillah and Pretsillah hills from 6 in the morning till 6 in the evening of

Monday the 1st of Assin.

Nos. 34 and 35, or Jeolall and Rungoo, state that they saw

Wit. No. 34, Jeolall Bunia.

" " 35, Rungoo Singh, Chowkeydar.

Chummun at his *mohul-lah*, until 6 in the evening of the 1st of Assin, that

day being a Monday.

The law officer, with whom the case was tried, releases all three prisoners from the charges contained in the calendar;

firstly, for the reason that there are contradictions in the case, as set forth by the prisoner No. 1 in his defence; secondly, because the witnesses differ in their statements from the plaintiff as to the number of persons implicated in the beating; thirdly, on the ground that the plaintiff was taken to the thannah on a charge of theft; and under such circumstances, even if there had been oppression used, with a view of recovering from him the property claimed or a portion thereof, such could not be classed as a crime, and any confession, which the thief might choose to make as a result of such tyranny could be valid. Nevertheless, this officer records it as his opinion that, in consequence of the deposition given by the doctor, he is led to imagine that Beharee, the plaintiff, was beaten at the thannah by the orders of the darogah, in the manner described by that officer, or with a heavy shoe.

With this finding of release I cannot agree, and indeed the tenor of the *futwa* would rather tend, as it appears to me, towards a conviction. Before touching upon the contradiction referred to by the advocate of prisoner No. 1, I would beg to point out that there does not seem to be any discrepancy, as alluded to in the latter part of the *futwa*. The plaintiff, in his deposition of the 25th of September certainly takes the names of Nugwah, Dorbejah and Chummun, and the witnesses recognise, on the same date Nugwah and Chummun only, as the persons who beat Beharee; but it must be borne in mind that the plaintiff, from being in the thannah, describes what he had fully the power of seeing: the witnesses merely that which they could see from without. Again, it is not an easy matter to understand how the doctor's deposition, which does not refer in any way to the thannadar could lead to the impression formed by the law officer, that Beharee Singh was beaten at the police station by the order of the darogah. Now, it has been urged in the defence by prisoner No. 1, that it was not possible for any one bound and beaten as described to have been seen from the road. If there be any truth in the statements made by the witnesses for the defence, this point of supposed difficulty is at once removed. Not only do the witnesses Nos. 18, 19 and 20, say that while they stood by Beharee in the thannah they saw from within the crowd on the road. But No. 21, deposes that from the road he saw Beharee in the thannah.

We therefore come to the discrepancies as set forth by that prisoner, and which I will only dwell upon as they relate to witnesses who give eye-testimony. It appears needless to follow out a long defence, which occupied nine hours in its delivery, through its unimportant stages, as having reference to witnesses, who merely depose to what they have heard. And "*imprimis*," I may remark that although the case is stated to have been got up, through disaffected parties, yet the name of only one such

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person, viz. Keramut Ally is mentioned, and no oral testimony has been adduced to show that even on his part there was any disaffection towards the darogah. Indeed it is difficult to conceive how Keramut Ally could in any way be concerned in this case, when he was not stationed within or any where near the precincts of Gya, when it was instituted.

It is said that Beharee not being senseless he must, and if he did not, that some of his relations would, on the arrival of the magistrate at the thannah, or indeed the other witnesses would have informed that officer of what had occurred. This by no means follows. The darogah himself, as is shewn by the magistrate, took care to occupy the time of that functionary by referring to the property said to have been recovered, and which it will be seen by the proceeding of the 5th December last, it was proved had never been stolen. Besides Beharee is stated to have been in the thannah, until six in the evening, by the witnesses for the defence Nos. 18, 19 and 20, and thus to have had no opportunity of going near the magistrate. Though it is urged that the deposition of the plaintiff differs from the petition presented to the magistrate by Beharee, yet this is not wonderful: the petition is not drawn up by the plaintiff, whereas the deposition is his full statement of the transaction: and as several of the witnesses mentioned therein were excluded from the calendar by the orders of the magistrate, there could be no need for referring to them in his statement made in the superior court. It is pleaded also that, according to Ukbur Ally's statement Beharee was bound by "Dorbajah," according to the plaintiff's that he was so bound by "Chummun." But we have no positive discrepancy here; for Ukbur Ally has deposed only to this effect, that to the best of his recollection such was the state of the case. Nor does his statement contradict the plaintiff's as to the origin of the beating. While the latter assigns a cause the jemadar gives none. He says that the darogah on seeing Beharee ordered him to be tied. The confession as referred to by the plaintiff it will be discovered relates to the latter part of the beating at which the jemadar affirms he was not present. And I cannot consider there is any truth in this remark "that before the principal sudder ameen, Beharee said he did not know the names of those who struck him," for on the 19th of September we have no such fact stated. Although Nujjoo has deposed that Ukbur Ally appeared before the Magistrate, yet this assertion or any other he has made would not tend in my opinion to shake Ukbur Ally's evidence such as it is; since it must be noted that that witness was first of all a defendant, and as such defendant he stated in his defence on the 25th of September that he did not recognise any one as having beaten Beharee. There is no force either in the remark, alluded to as a contradiction, in the evidence of Nuzzur Ally.

He certainly, on the 22nd of September in the Magistrate's court, asserts that he does not know the names of the chowkeedars who beat Beharee; but on that day there were no defendants before the court to be recognised, and when on the 26th idem, and by which date Nugwah and Chummun had been *challaned* he was again questioned, he then pointed out only those persons, as parties concerned. Nor does Kewul speak differently of the condition of Beharee in the magistrate's court, and before the sessions. In both instances he describes Beharee as being senseless. And it will be found that there is no discrepancy in the magistrate's remarks regarding the search; for on the day on which it was made, or on the 15th September, a deposition was taken from Ramlal at the thannah, as well as on the 16th idem, the date referred to by the magistrate. These seem the points of difference to be touched upon, which cannot, after the explanation given, militate in favor of the defendant's release. The very few remaining shall be referred to hereafter, but it must be remarked with reference to the pleas set forth by the defendants, Nos. 2 and 3, that stress is solely laid on the depositions taken before the magistrate on the 22nd and 23rd of September at a time, as I have already shewn, when the defendants Nugwah and Chummun were not before the court; and though Ukbur Ally does not state positively that these men did not take a part, still his so expressing himself cannot tend to destroy the remaining testimony against them, especially when it will appear that Nugwah's own witnesses do not allude even to the subject, which they were particularly called upon to prove, with a view to this defendant's innocence. Neither can any value be attached to the small amount of evidence on behalf of the defendant Chummun; and it will be seen that while Choalal, No. 15, and the first witness for the defendant No. 1, states he was at the thannah, still he adds he had no reason for going there; and he willingly deposes that he has heard that this case is a true one, the report being current throughout the city. Again it must be noted that the witnesses Nos. 18, 19 and 20, though they went to the thannah as they state, for the purpose of enquiring into their lost property, yet no record remains of such enquiry which it would have done were their statement true. Nor does the witness Adhun, No. 19, allude to the presence of the witnesses Nos. 22, 23 and 26, though these latter expressly state they were called by that person. If then all this testimony be doubted, as it most reasonably can be, as well as that given by those, from Nos. 28 to 32, we have the defendant No. 1, left without any support and no attempt made on his part to deny the presence of Ukbur Ally at the thannah, or to show how the plaintiff Beharee was beaten. Nay more we have him distinctly, without any show of reason, declining to hear the evidence of his two witnesses Khodabux

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and Omanylal, the one being the burkundaz, who received charge of Beharee from the darogah, on the 17th September last, and who took him to the magistrate's court, the other being the naib nazir of that court, and who could swear to the plaintiff's state, on his arrival there. To this, Omanylal has sworn before the magistrate on the 17th of the above month, and he described the person of Beharee as presenting the appearance of his having been beaten on the hinder parts, and of his suffering much from internal pain. I would also wish to draw attention to the fact that Beharee is shewn to have been taken to the thannah in a sound condition; and to the deposition of the medical officer, Doctor Allan, in which he states that, previously to Beharee's being admitted into hospital and which he on the 18th September, [vide letter of Doctor Allan of 6th January, 1857,] he examined him in the magistrate's cutcherry, when his body presented all the marks which have above been described by him on oath. I would also wish to lay stress on the circumstance, that the witnesses for the prosecution describe what they saw at different times. Considering then the nature of injuries causing severe concussion of the bones, and all the circumstances, which have been related, there can be no doubt I think, as to the entire truth of the evidence given on the part of the witnesses for the plaintiff as to the binding of the prisoner with the handkerchief; of the *lattee* having been introduced between his hands and legs; and of his then having been severely beaten by Nugwah and Chummun with a heavy shoe by the order of the darogah Kojbehareelal, until he was in a senseless state. When the bones received such injury, there can be little doubt of senselessness. But there are two points, which throw a doubt upon what is described as torture, one is that had there been any dashing against the *chowkut* of the door, the skin must have been broken, the other that where such force was applied, by swinging, there would have been some mark left, on either the hands or the feet of the *lattee*. This, however, would not apply in the assault and beating of a person bound; and of the doubt in my mind as to torture, I would give the prisoners the benefit. The case of mal-treatment and assault seem to me, however, to be deserving of a very severe punishment, and the circular of the Under-secretary of Government, No. 31, of the 17th December, 1855, to be one that cannot alone be acted upon. I would therefore find the prisoner No. 1, guilty on the 2nd count, in the calendar, or of giving the order to assault the said Beharee, and also on the 3rd count, in part, or of being an accomplice in the assault of the said Beharee; and the prisoners Nos. 2 and 3, on the 2nd charge on which they were committed, viz. of having assaulted the said Beharee Singh, and with reference to the previous punishments of the prisoner No. 1, and the extreme

nature of the mal-treatment, but little short of torture, would recommend him to be imprisoned for a period of three years, and to pay a fine of 500 rupees within eight days, or to labor; the prisoners Nos. 2 and 3, the first of whom has acted as chowkeedar, and the latter who now is a chowkeedar, to one year and six months each in prison, and to a fine of 30 rupees within the same time or to labor for that period.

I regret that in consequence of the indisposition of the law officer for two entire days, and the necessity of giving up one day to the examination of Mr. Assistant Sandys there should have been such delay in the disposal of the case; which delay was further considerably added to, in consequence of the manner, in which the prisoner No. 1, or his agent, had surreptitiously, as it will appear, obtained a copy of the grounds of the magistrate's commitment. Considering the position of Moheputnarain as a mooktar, and the plea set up through him, but proved to be untrue, that it was obtained through the mohurrir of the Government vakeel, I consider he is unfit for the situation he holds, and that his name should be struck off the list of mooktars in the magistrate's court.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Counsel for prisoners, Moonshee Ameer Ally, Moulvy Murhamut Hossein, and Baboo Unoda Persad Banerjea.

*On the part of Government.*—The Junior Government Advocate.

The grounds of appeal urged by the prisoner, Koonjbehareelall, are as follows:

1st. The Sessions Judge considers the charge of torture not satisfactorily proved, and if this charge fall to the ground, there remains only the minor charge of assault and battery; an offence, which does not demand so severe a sentence as that proposed by the Sessions Judge.

2nd. The Sessions Judge considers the rule laid down in the Circular Order from Government, dated 17th December, 1855, No. 31, not applicable to this case. That Circular Order prescribes, that if any torture take place at a police station, the chief police officer is liable to dismissal. Now, in the calendar, two charges have been brought against the defendants, 1st of torturing the prosecutor; 2nd of assaulting him. The first is rejected by the Sessions Judge; and as for the second, admitting, for argument's sake, that it be proved, the punishment to be inflicted can only be of dismissal, and not of imprisonment and fine.

3rd. In all complaints, the first information given is always admitted to be the most trustworthy. In his defence, taken before the Magistrate, on 17th September, 1856, Beharee Singh merely stated that the darogah had caused him to be beaten,

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but he did not specify the names either of the parties who beat him, or of the witnesses who saw it done; and on the 19th, when questioned, he stated that he had entered the names, both of the accused and witnesses, in a petition, which he intended to present to the Magistrate. Had the complaint been true, the prosecutor would have mentioned all that had occurred, as also the names of the parties he charged, and of the witnesses, when examined on the 17th. He was not in confinement; and has consequently had opportunity to collude, and has colluded with the darogah's enemies, Kiramut Oollah and others; and thus on the 19th, accused the darogah as principal, and Nujjoo, Durbejah, Nugwah and Chummun, as accomplices. His object in charging Nujjoo was to secure an eye-witness to the fact; for Nujjoo, on the 25th September, filed a petition, in some degree confirmatory of the prosecutor's statement, without implicating himself; and on trial, the prosecutor pretended not to identify him, and said the party he charged was Nudjoo or Nudroo; so Nujjoo was released; and his evidence taken, and Nadir Chowkeedar, pointed out by the prosecutor in his place, proved an *alibi*, and was acquitted by the magistrate.

4th. Durbejah, another accused party, has been released. Now the witness, Ukbur Ally, on whose evidence the Magistrate lays particular stress, deposes that Durbejah tied the prosecutor's hands and feet with a cloth, taken from the prosecutor's person. The darogah then ordered a stick to be inserted between his hands and legs, and the prosecutor to be beaten. There were ten chowkeedars present, who commenced beating the prosecutor, and bumping him against the *chowkut*; but the witness cannot state whether Chummun and Nugwah beat the complainant or not. Here is distinct evidence against Durbejah; and yet the Magistrate has released him for want of proof. If this evidence be true, and the Magistrate lays great stress on the truth of the evidence given by Ukbur Ally, and Durbejah has been released notwithstanding, what credit can be given to the rest of the evidence which is conflicting? It is evident, as shewn in the darogah's *arzee* of 24th September, that the charges against him have been got up by his enemies.

5th. In his petition of 19th September, the prosecutor mentions certain parties as eye-witnesses. On the 20th, prosecutor gave his deposition, and mentioned other witnesses in addition to those entered in his petition, about fifteen in all;—of these, five deny all knowledge of the matter; one is absent; four speak merely from hearsay; and five only depose to the fact. The contradictions in their evidence, (as pointed out by the prisoner in his defence,) are so obvious, that it cannot be admitted as deserving any credit. Further, the residence of the witnesses is not given in the petition, and they describe themselves to have been passing by, each on his own errand, and to have come to

the thannah very opportunely as the alleged ill-treatment was going on ; that as the thannah of Gya is situated in the *chowk*, and is surrounded by the houses of respectable mahajans and others, how, if the charge be true, were they not called as witnesses, instead of people who live at a distance.

6th. As regards the contradictions in the evidence, it may be remarked that the prosecutor stated to the Magistrate, that the darogah ordered Nugwah, Chummun, and Durbejah to ill-treat him ; and Chummun tied his hands. The darogah then gave a shoe, and *gola lathi* to Chummun and Nugwah who proceeded to beat and bump him. Before the Sessions Judge, he charges Chummun only with having tied and beaten him ; and adds, that when the magistrate left, the darogah, in order to make him confess, ordered him to be swung, and bumped against the wall. The witness Ukbur Ally, however, deposes that Durbejah tied him, and ten chowkeedars beat him, and two of them swung him against the *chowkut* ; but whether Chummun and Nugwah beat him, the witness cannot state. This witness states that the bumping took place before the magistrate's buggy drove up, but the prosecutor distinctly states that it did not occur till after.

7th. The prosecutor asserts that he was ill-treated both before and after the Magistrate visited the thannah on his way to and from the hospital ; and it is surprising that in all that crowd no single person dared inform the Magistrate of the torture, which was being publicly inflicted. The darogah, who is now under trial, has been in Government employment since 1829, and has been in charge of the Gya thannah since 1841 ; was promoted to the first grade in 1845, and is a candidate for the office of Deputy Magistrate. He has very many certificates from officers, under whom he has served, and but very lately the townspeople forwarded a petition to the Commissioner of Circuit, praying that he might not be removed. It is therefore unlikely that he should commit the offences with which he is charged to the injury of his prospects.

8th. The Sessions Judge considers the assault and battery proven ; yet when the prosecutor went to the Magistrate on 17th, he was quite well. He was apprehended on 15th, and forwarded on 17th ; and both the mohurri, who sent him, and the burkundaz, who accompanied him, prove that he was well when he left the thannah. When he reached the magistrate's office, he complained of ill-usage. Why did not the magistrate make an immediate enquiry ? There was in fact no cause for ill-treating the prosecutor. His house had been searched and property discovered which was identified by Ramlal, though claimed by Beharee, the present prosecutor ; and nothing could be gained from ill-treating him.

9th. The prosecutor urges, as a reason for the torture alleged to have been inflicted, that the darogah owed him a grudge for giving evidence against him in the case of Nujjar

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Ally, in which the darogah was charged with releasing a prisoner on receipt of a bribe of Rs. 200. This case was dismissed after the present charge was instituted, and the Magistrate, in disposing of the present case, has not referred to it.

10th. The original case in which the prosecutor, Beharee Singh, was apprehended, was investigated by the mohurrir; and the darogah had no occasion to interfere; and as the case was proven, nothing was to be gained by ill-treating Beharee. Further, the magistrate affirms that Beharee could not raise himself; yet from the Magistrate, Beharee went to the principal sudder ameen, but never showed the marks of the beating he is said to have received, to that officer. Moreover, it is unlikely that he could have survived after receiving four hundred blows with a shoe, as he asserts.

11th. Another objection to the charge is the improbability of the offence being committed in public. Had it been, how was it that the Magistrate, who came unexpectedly to the thannah, did not discover what was going on in the presence of the crowd? If the offence was committed secretly, the people in the crowd could not have seen it.

*Judgment.*—With regard to the 1st and 2nd pleas urged in appeal, it may be observed that the Sessions Judge throws out the first count of torture, because he thinks, that, had the prisoner been dashed against the *chowkut*, the skin must have been broken; and that some mark of the *lathee* must have been left on either the hands or feet. But the Civil Surgeon, before the Sessions Judge deposes, that he thinks “they (the injuries) must have resulted from something more severe than the beating by a shoe; and it is very probable that they were occasioned by his having been dashed against a door:” and he describes the injuries on Beharee’s person as follows:—“From the small of the back down to, and below the buttocks, the parts were much swollen, and the skin highly discolored, the result of a beating with a flat instrument, such as a shoe. From the man, Beharee, not being able to assume an erect position, there is no doubt also that the bones received a severe concussion.” The Civil Surgeon adds, that for “upwards of a week he was unable to leave his bed without assistance, and for nearly three weeks, to the best of my recollection, he was under treatment.” From this statement it is clear that the prosecutor, Beharee Singh, suffered most severely; and whether beaten with a shoe only, or bumped against the wall, in either case, the ill-treatment he received must be considered tantamount to torture. Nor would such swinging and bumping necessarily *cut* the skin.

As regards the 3rd plea, it may be observed, that when examined by the Magistrate on the 17th, Beharee charged the darogah with having caused him to be beaten; and that a chowkeedar with a beard beat him with a shoe, and two men so pressed

him down on a *chowkut* with a stick, that he could not raise his back. There were four men, chowkeedars and servants of the darogah, who beat him; that he could identify the chowkeedars, and intended to complain to the Magistrate of the ill-treatment he had received from the darogah, and had prepared a petition to that effect, which contained the names of the witnesses to prove the charge. The ill-treatment, which Beharee Singh had received, was brought to the Magistrate's notice by the mohurrir who wrote down his examination, and he was consequently put upon security. The prosecutor was not to blame that he did not enter into further detail regarding the ill-treatment he had received. He had brought the charge, and it rested with the Magistrate either to examine him further on the subject, and to require the names of his witnesses then, or to allow him to bring a complaint against the darogah by petition in the usual manner. It is pleaded that the prosecutor has colluded with Kiramut-Oollah and others, enemies of the darogah. It may be true that such enmity exists; but there is no proof at all that the prosecutor has colluded with them, or that they have, in any manner, instigated him to get up a false charge against the prisoners. The assertion made, as regards the witness Nujjoo, is unsupported by any proof. It may too be here remarked, that his evidence is neither full nor satisfactory. He says before the Magistrate he was at a distance in the crowd, and saw the prosecutor beaten by the darogah's orders; but by whom, he cannot tell. Had the prosecutor entered into an arrangement with this man to give false evidence, he would surely have arranged that he should have spoken more fully as to the circumstances and parties, than he has done.

There is, without a doubt, a discrepancy in the evidence given by Ukbur Ally, as noticed in the 4th and 6th pleas advanced in appeal, regarding the party by whom the prosecutor was bound. This discrepancy, however, does not destroy the evidence against the darogah, nor render incredible the facts of the case as stated by the prosecutor and his witnesses. It simply raises a doubt as to the identity of the party who first tied the prosecutor.

Besides the discrepancy noted above in Ukbur Ally's evidence, there are no material discrepancies in the evidence of the other witnesses. They differ in their statements as most witnesses in a case like this will do; they speak to what struck them particularly, but all agree in the *main fact, that the prosecutor was beaten and swung and bumped, by orders of, and in the presence of the darogah*, by the prisoners, Chummun and Nugwah, and others.

A further discrepancy has been pointed out by the Counsel for the prisoner, in the evidence of the witness, Ukbur Ally, as compared with that of the prosecutor, which it is necessary to

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notice. The former deposes that the prosecutor was swung and bumped against the wall previous to the Magistrate's first arrival at the thannah; the latter asserts that this did not occur till the Magistrate had left it. The statement of Ukbur Ally seems to be correct, supported as it is by the evidence of Mullick Nuzzur Ally witness No. 2; nor is it in reality contradicted by the prosecutor's statement; for he deposes that he was tied, and a stick inserted between his hands and feet, before the Magistrate's buggy came up; and on the buggy driving off, Chummun and Nugwah took each an end of the stick, and swung and bumped him. He does not positively say that he was not bumped against the wall before the Magistrate's first visit; and it is possible he was ill-treated in this manner both before and after that officer's coming, though he speaks particularly of that which occurred subsequently.

The objection raised to the witnesses for the prosecution, that they were not residents of the *chouk*, in which the thannah is situated, and therefore were not likely to be present, is equally applicable to the witnesses called for the defence, all of whom came from a distance, each similarly on his own errand. All saw Beharee in the thannah, though some of them were standing on the road, and all acknowledge there was a large crowd attracted round the thannah at the time, but none of them saw him ill-used.

It is asserted in the 8th plea, that the prosecutor was well when he left the thannah, and that there was no cause for ill-using him; and therefore the charge against the darogah is false. It is also urged in the 10th plea, that as the original case was investigated by the thannah mohurris, and was proved, the darogah had no occasion to interfere, and would not, without cause. It is, however, clear the prosecutor arrived, under charge of a police burkundaz, at the magistrate's cutcherry on 17th; and his examination was taken that day; and he then complained of having been beaten by orders of the darogah, and *showed marks of battery*, which the civil surgeon, who examined him, *in the cutcherry*, has described in his depositions before the Magistrate and Sessions Judge. Two causes are assigned by prosecutor for this ill-usage, and both may have had effect; the first was, the prosecutor having given evidence against the darogah, for taking a bribe to release a thief; and secondly, a charge of theft being preferred against the prosecutor, the darogah was anxious to make him confess to the commission of the theft, to render the evidence against him more complete, and *fully* sufficient for a conviction. The Mohurris carried on the local inquiry; but on returning to the thannah, made over (as is shewn by the evidence) the prisoner to the Darogah, who immediately ordered him to be beaten and otherwise ill-treated. The prosecutor's statement, that he received

four hundred blows from a shoe may be exaggerated; but that he received a very severe beating, there cannot be a doubt. The Magistrate, who stopped at the thannah on his way to the hospital, states in Column 14 of the Calendar, that he observed the crowd round the thannah, and that the darogah and other officers spoke to him about the discovery of Bamlall's property in Beharee Singh's possession; but it is not surprising that Beharee Singh then made no complaint, for the ill-usage had ceased for the time; he was also distinctly threatened, and was restrained by fear, and a guard, from approaching the Magistrate; and that officer, occupied with other business, and not having his attention called to this, passed on without knowing what was occurring in the thannah; and it is unlikely that any one in the crowd, unless interested in the party suffering, should give information to the Magistrate, in the face of the darogah, for fear of personal consequences. The defence of the prisoner Koonjbeharee, is a simple denial of the charge; and he calls witnesses to prove that Beharee Singh was subjected to no ill-treatment when at the thannah on the afternoon of the 15th; and urges his long service and previous good conduct. The other prisoners plead an *alibi*, which they have not satisfactorily substantiated.

After a careful perusal of the record, and consideration of the pleas advanced in appeal, we think, with reference to the remarks noted above, that these pleas are untenable; and that the charges against the darogah and other prisoners are proven. We accordingly reject the pleas advanced by the Counsel for the prisoner. We are willing to give due weight to the plea of past good conduct, and length of service advanced by the prisoner Koonjbeharee. He was aware, however, that torture and ill-usage of prisoners by police officers is strictly prohibited by law; that in many instances police officers have been punished for the offence; and that so lately as 17th December, 1855, stringent orders on the subject, were issued by Government, declaring the chief resident police officer liable to dismissal, if torture were inflicted on any one in his station; and these orders were circulated to the police. In consideration, however, of the record of his past services and previous good conduct, the Court will not enhance the punishment proposed to be inflicted by the Sessions Judge. We sentence the prisoners accordingly.

*Application for Review of the preceding Judgment.*

*Remarks by presiding Judges, Mr. G. Loch and Mr. H. V. Bayley. Counsel for Applicant, Mr. A. Peterson.*

*The Junior Government Advocate for the prosecution.*

The pleas urged by Counsel are these. That this Court can only take up the point on which the reference is made. That the prisoner having been acquitted by the Sessions Judge on the

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1st count, cannot now be convicted on that count; for each count must be considered a separate charge, and it would be tantamount to convicting a person acquitted by the lower Court, were this Court to convict on that count. That as the 1st count has been rejected, and the 2nd count does not charge the prisoner with any intent to do grievous bodily harm, or with any specific intent otherwise, the case is one only of *common assault*; and the major charge being disproved, the *punishment* on the minor charge must be *commensurate* with the offence, and that as that 2nd count charges the prisoner with *no evil intent*, the Court cannot convict him of a higher offence than entered in the calendar, viz. assault. The Counsel adds that assault committed by a police officer is no doubt very reprehensible, and would render him, under the orders of Government liable to dismissal; but the offence in itself, as in the Code of Criminal Justice, is not a greater one, when committed by a police officer than when committed by any other person, and the measure of punishment should be in accordance with this view, viz. that prescribed in Regulation IX. 1807. Further, that the manner in which this case has been got up, and the nature of the evidence render it open to suspicion. Beharee Singh was taken to the Magistrate on 16th; but there was no complaint of that date. On the 17th he was taken before the Principal Sudder Ameen; but it was not till the 19th that he filed his petition charging the darogah, and brought forward his witnesses. That the evidence of the civil surgeon is somewhat vague, though it shews that the man had been beaten; that the man was able to walk from the thannah to the Magistrate's office, and yet is subsequently declared to be incapable of moving; that he must have been assuming that character, or had taken something to reduce his strength. Moreover if Beharee Singh was beaten in the verandah of the thannah in the sight of the crowd, the Magistrate, when he came up, must have seen him; that it is alleged that he was tied hand and foot, and he must have been in that position when the Magistrate arrived, and that officer could not have avoided seeing him; and as Beharee saw the Magistrate he would doubtless have called to him, or some one in the crowd would have told the Magistrate what was going on. The Counsel proceeds to state that the evidence of the eye-witnesses cannot be relied on, as it is contradictory, and not corroborated by any independent circumstances; while if the man had been tied as he deposes, even with the softest cloth, for a quarter of an hour only, marks of the ligature must have been left on the arms; and that the parts, which would have come against the wall or *chowkut*, would have been the shoulders, and not the posteriors. It is pleaded that, looking at the manner in which the charge is brought, it is clear that Beharee Singh was apprehended for

theft; that property was found in his possession, which is sworn to by the owner; that this original case was true; Beharee was tried, and convicted by the Principal Sudder Ameen, though subsequently acquitted by the Magistrate. Thus a charge, made by a person in his position, must be received with great caution; especially as in his first statement to the Magistrate on 17th September, Beharee merely charges the darogah with having ordered him to be beaten, and adds that a chowkeedar, with a beard, beat him with a shoe; that although he says subsequently two chowkeedars pressed him down on the *chowkut*, still this is very different from his subsequent charge. That in all cases the major charge is invariably brought forward first; but the petition given in on 19th, sets forth what is entirely omitted in his previous examination. The Counsel notices that the reasons assigned by the complainant, for the ill-treatment cannot be admitted as valid; for it cannot be supposed that because Beharee Singh gave evidence against the darogah, that officer should have entertained a personal dislike to him, and for that reason ill-treated him; nor is the cause mentioned in the petition, that he was beaten in order to get a clue to the discovery of the stolen property, of any weight; for the property had been found upon him. That moreover, the parties, who were apprehended and taken with Beharee Singh to the thannah, have not been examined, which, as being the best witnesses, they should have been; and that the Thannah Mohurrir was not examined by the Sessions Judge, though he distinctly deposes before the Magistrate that the complainant, Beharee, was not beaten at the thannah. The Counsel urges that a great deal of hearsay evidence has been improperly admitted in this case, and the evidence of the eye-witnesses is contradictory. The Counsel concluded by remarking on the measure of punishment awarded which, considering the position and high character of his client, who was on the list for a Deputy Magistracy, was very severe, and he urged that if the appellant had in excess of zeal been tempted to inflict punishment on the complainant, he could only be punished for common assault, and that if the Court found that an aggravated assault had been committed, still the technical objection arises that the appellant can only be convicted on the particular charge entered in the calendar.

Having carefully considered the above pleas we have to observe that in cases referred for their final orders, the Court of Nizamut Adawlut has authority under Clause 6, Section 4, Regulation IX. 1831 to revise the whole proceedings of the Sessions Judge; and the opinion of the Sessions Judge, that he does not consider this or that count proved against a prisoner, regarding whom the reference is made, does not amount to an acquittal on that count, nor bar the revision of the Nizamut Adawlut. The

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Sessions Judge in the present case expresses a doubt whether the first count is substantiated, because he considers the skin would have been torn, had the complainant been ill-treated as he described, and the arms would have shewn the marks of the stick on which he was swung; but we have the deposition of the Civil Surgeon, who distinctly states that he considers the injuries on Beharee's person "must have resulted from something more severe than the beating by a shoe, and it is very probable that they were occasioned by his having been dashed against a door," and as regards the absence of marks on the hands it must be remembered that a period of nearly three months elapsed before the case was tried at the Sessions, and probably no marks would then be visible; and neither the Magistrate nor the Sessions Judge appears to have referred to this point in their examination of the Civil Surgeon. It is true that Beharee Singh walked from the thannah to the Magistrate's office, but he might have done so, though then suffering from the effects of the ill-treatment, and with difficulty able to raise his back. The effects of the ill-treatment might have exhibited themselves in the manner described by the Civil Surgeon, without supposing that the complainant had resorted to any means as suggested by the Counsel to reduce his strength. Though Beharee Singh was sent from the thannah on the 16th, he continued under charge of the police till the morning of the 17th; and on that day his examination in the theft case was taken, and the marks of beating of which he complained were observed on his person. Thus whatever ill-treatment he met with, must have been done before he reached the Magistrate's Court, while he was in the hands of the police; for after he arrived at the Court there was no opportunity for inflicting such punishment upon him, nor was there any reason for the Magistrate's ministerial officers to do so; and from the evidence of the eye-witnesses (all hearsay evidence having been rejected by this Court as well as by the Sessions Judge) which notwithstanding some discrepancies remarked upon in our former judgment, we are constrained to believe, we find, that this ill-treatment took place at the thannah, and in the presence and by orders of the darogah Koonjbehareelal. It is unnecessary for the Court to enter upon the various contradictions noticed by the Counsel for the appellant, as these have been duly considered in detail in our previous judgment. As regards the non-examination of the parties apprehended along with Beharee Singh or of the thannah Mohurrir, it may be remarked that the prisoner, appellant, might have called these parties as witnesses for the defence had he wished for their evidence, the Magistrate having used his discretion in entering in the calendar the names of such witnesses only as could prove the charges against the prisoner. It is urged by Counsel that the reasons

assigned by the complainant for the ill-treatment he received, viz. personal ill-will on the part of the darogah, because complainant had given evidence against him, and the wish to discover a clue to the stolen property, are both futile. The first he considers improbable; the second contradicted by the fact that the property stolen had been found with the complainant, and the charge of theft as regards him had been fully made out. We think that both reasons may have had effect with the darogah; the latter so as to make the charge more complete. It may also be observed that though certain property claimed by Lallmohun was found in the possession of Beharee Singh, yet other property had been stolen; and to obtain a clue to the discovery of the still missing property, the ill-treatment might have been inflicted.

In regard to the plea that the assault in the 2nd count must be regarded merely as a common assault of one private person on another, we have above given our reasons for considering that it was not a common assault in the sense urged by the Counsel. Further by Act II. Section 19, Regulation XX. 1817 any species of maltreatment inflicted on a prisoner with a view to extort a confession or to produce information, subjects the offender to *exemplary* punishment.

The Court have given due consideration to the claims of past good conduct advanced by the appellant. It is with much pain they feel constrained to confirm the sentence passed upon the prisoner, appellant, by the Sessions Judge. They consider the prisoner Koonjbehareelall guilty of ordering an *aggravated assault and battery of the nature of torture*: and considering how strictly the system of ill-treatment of any kind is forbidden, and how recently police officers have been warned of the consequences of permitting it, the Court feel obliged to make an example, which is the more necessary, and at the same time the more painful, when the offender is an old and experienced officer.

Thus, considering that the pleas urged by Counsel for a rehearing of the case are insufficient, the Court adhere to their previous conviction and sentence.

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ROGAH.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*

## GOVERNMENT

*versus*

AMJAD ALLI (No. 1.) MOTEEOOLLAH (No. 2.) MEAH-JAN (No. 3.) WAJUDDEEN (No. 4.) DHON GAZEE- (No. 5.) RUMEEZOOLLAH (No. 6.) FUKER MAHOMED (No. 7.) TOMEEZUDDEEN (No. 8.) BUDDERUDEEN (No. 9.) CHUNI (No. 10.) DAEMOOLLAH (No. 11.) NONDA GAZEE (No. 12.) GONDA GAZEE (No. 13.) AND AMOO PATWARRY (No. 14.)

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Prisoners  
convicted ;  
and the principal  
severely  
punished ; the  
pleas in appeal  
being overruled.

Remarks on  
necessity of  
specification  
of areas, and  
distances in  
feet.

CRIME CHARGED.—Mutual affray attended with the murder of Kazem Patwarry.

CRIME ESTABLISHED.—Mutual affray attended with the culpable of homicide of Kazem Patwarry.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 4th November, 1856.

*Remarks by the sessions judge.*—This affray originated in the following circumstances.

Talook Khuleel Mahomed Bhooyeah is composed of two separate shares, the 9-annas portion being the property of the heirs of the late Wassiluddeen, and the 7-annas share belonging also by inheritance to the prisoner Amjad Alli and his brother.

When Wassiluddeen died, an event which occurred about a year and a half ago, his daughter Fyzunnissa who is married to the prisoner Amjad Alli claimed a 3-annas, 16-gundahs share of her father's estate. This claim was opposed by her brothers Mahomed Ameeruddeen and Mahomed Kulleemuddeen, but their opposition was deemed too vexatious and a summary order issued directing that the daughter should be placed in possession of the share to which, under the Mahomedan law of inheritance, she appeared to be entitled.

This decision, however, was insufficient to induce the surviving brother Mahomed Ameeruddeen (for Kulleemuddeen died shortly after his father) to surrender to his sister her share of the patrimonial property, and her husband Amjad Alli therefore proceeded to assist his wife's rights by force of arms, and Ameeruddeen to protect what he conceived to be *his* in the same mode. They appear to have hired what are termed *negabans*, but in other and more correct phrase are *latteals*, and thus supported, Amjad Alli (prisoner No. 1.) proceeded to seize

ryots of the estate and Ameeruddeen's partizan to resist such seizures. An occurrence of this kind on the forenoon of the 17th August led to a serious affray in the course of which the leader of Ameeruddeen's fighting men, Kazem Patwarry was so severely beaten as to die on the evening of the same day. The joint-magistrate of Noakhalee seems to have completely distrusted the integrity of his police, and to have anticipated that every species "of treachery would be resorted to in the mofussil," and therefore to have directed that no local enquiry should be held. There is consequently no police report to refer to for the circumstances I have mentioned as those in which the affray originated, but they are gathered from the evidence taken in the joint-magistrate's court, and my own, and from reference to the records of Fyzunnissa's application for possession of her rights and interest in her father's estate.

Intimation of the affray and its fatal consequences was given on the day of the occurrence by the witness, Chuni jemadar, who brought the wounded man Kazem Patwarry (his brother) to the joint-magistrate's house in a dying state. He informed the magistrate that the prisoner Amjad Alli (No. 1,) had come into Soodharam at the same time and an order for the apprehension of the latter was immediately given and carried into effect close to the civil surgeon's house, Amjad Alli when put on his defence in the joint-magistrate's court pleaded that he was at Soodharam on the 17th August, and that Ameeruddeen's people had wounded each other with the object of accusing him of the violence committed purposely by themselves.

The first five of the witnesses named in the margin,\* deposed to

|                       |                                     |
|-----------------------|-------------------------------------|
| No. 1, Chuni jemadar. | having seen the affray from such    |
| " 2, Johiruddi.       | short distances as enabled them     |
| " 3, Doollal.         | to command a fair view of what      |
| " 4, Reazuddi.        | was taking place. They spoke        |
| " 5, Ameeruddi.       | decisively and clearly to Amjad     |
| " 6, Azeem Paghi.     | Alli's (prisoner No. 1,) presence   |
| " 7, Koromuddi.       | and leadership on the occasion, if  |
| " 8, Esuff.           | as doubtless is the case, the issu- |
| " 9, Shooah Gazee.    | ing of orders to commence and       |

proceed with an affray without taking an active personal share in it is to be considered leadership, for he is described as standing at a distance of two or three *kanees* and as from whence without personally joining in the fight directing and encouraging his men to attack their opponents. The remaining four witnesses Azeem Paghi (No. 6,) Koromuddi (No. 7,) Esuff (No. 8,) and Shooah Gazee (No. 9,) are servants of the prisoner Amjad Alli (No. 1,) and give a very different version of the affray, not only placing it at another spot, but two of them actually ignoring Kazem Patwarry and his death altogether. These witnesses were themselves wounded and there can be no doubt that they

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were personally concerned in the affray, and as little doubt that their version of the scene is not to be relied on.

I think it on the whole, a matter of regret that the joint-magistrate allowed his distrust of his police and fear that every sort of treachery would be resorted to, to interfere with the local enquiry usual in cases of so serious a character. A police report for example would have been serviceable on the following point. The darogah of Soodharam was directed to draw up a map of the locality in which the affray took place, but prohibited from giving any opinion of his own or furnishing any information exclusive of that to be supplied by the map itself. He does not therefore mention the distance between the scene of the affray and the cross road (running east and west) forming the southern side of the Lahoury tank on which Amjad Alli (prisoner No. 1,) is said to have taken up his position. The map merely mentions some houses to the north of the tank, which it describes as being twelve or thirteen *kanees* distant from the spot on which the fight took place. Now the first five witnesses Chuni jemadar (No. 1,) Johiruddi (No. 2,) Doolal (No. 3,) Reazuddi (No. 4,) and Ameeruddi (No. 5,) in whose evidence, as apparently open to no objection on the score of bias and prejudice, I am disposed to place great confidence, describe Amjad Alli's (prisoner No. 1's) position on the south of the tank and at its eastern corner as being distant only two or three *kanees* from the scene of the affray, and there is thus a discrepancy between the map and their evidence, for deducting the space covered by the tank itself, as it is sketched in the map from the twelve or thirteen *kanees*, there would still evidently remain more than two or three *kanees* between its southern bank and the scene of the fight. Unexplained, however, as the map is by any accompanying report, I am far more inclined to rely on the testimony of the five witnesses to whom I have referred than on its accuracy, especially as the darogah's calculations of distances seem to be rather arbitrary. For example, the map places the house of Shooah Gazee, witness for the prosecution (No. 9,) at two *kanees* distance from the spot where the fight took place, whereas Shooah Gazee (witness No. 9,) himself says that one *kanees* only is the intermediate space. I am not, however, disposed to lay much stress on the precise position in which Amjad Alli (prisoner No. 1,) stood when he issued his orders to commence the fight, or on the exact distance at which he remained while the affray was proceeding. The main point, I think, is clear that he marshalled his fighting men and that they fought under his orders, personally issued.

It is worthy, I think, of remark, as showing the true character of the evidence of the witnesses Azcem Paghi (No. 6,) Koromuddi (No. 7,) Esuff (No. 8,) and Shooah Gazee (No. 9,) that their depositions are totally at variance with the defence

of their employer Amjad Alli (prisoner No. 1,) himself in the joint-magistrate's court. They depose to a riot at least, if not a mutual affray, in which three of the four were wounded whereas Amjad Alli's (prisoner No. 1's) defence, when apprehended, was that Ameeruddeen's men had purposely wounded each other in order to support a charge of affray against him, the whole affair being a got-up thing instead of a real occurrence.

It is not clear from whose hand or hands, Kazem Putwarry received the injuries to which his death is immediately attributable. But he must have been most ruthlessly beaten, with heavy *lattes*, probably, for, in addition to other and minor injuries, his skull was completely fractured from ear to ear across the top of his head, the bones of which, were much shattered with the usual consequence of effusion under the skull. He was brought in, as I have already said, to Soodharam, which is distant only six miles from the scene of the affray, in a moribund state and died in a short time after entering the medical officer's compound on the evening of the same day.

The defence was either an *alibi*, or that the prisoner was merely a spectator of, and not a party to, the affray. Some of the prisoners called witnesses to establish their defence. Others, Chuni (prisoner No. 10,) Daiemoollah (prisoner No. 11,) Gonda Gazee (prisoner No. 13,) and Amoo Putwarry (prisoner No. 14,) who had witnesses in attendance declined having them examined and prisoner Nonda Gazee (No. 12,) had subpoenaed no witnesses at all.

My estimate of the value of the evidence in support of Amjad Alli's (prisoner No. 1's) absence at Soodharam will be stated at the close of this abstract. As regards the evidence in support of the defence of the remaining prisoners, I am inclined entirely to agree with the committing officer that the pleas of *alibi* are entitled to no belief when contrasted with the evidence for the prosecution. The prisoners Nonda Gazee (No. 12,) Gonda Gazee (No. 13,) and Amoo Putwarry (No. 14.) were wounded and must have received their injuries in the affray.

The frequency of these murderous affrays, which form a most discreditable feature in the local history of more than one district of lower Bengal, will be lessened only when the principal and not merely their hired instruments, are brought to justice for the outrages committed under their directions and for their own illegal purposes. In the present instances the affray originated in a very common cause. Two talookdars were at variance, the subject of dispute being the right of possession to certain lands claimed by both. They hired fighting men who earned their wages so conscientiously that some were wounded and one was killed. Ordinarily the employers of these *lattees* keep carefully aloof from the scene of the affray, and having

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thus escaped the consequences, which fall entirely on the hired *latteals* engaged in the fight, are ready to enlist fresh forces and cause fresh disturbances. It is obvious that the punishment of men who professionally balance the risk of conviction against the wages given them to run it, does not and cannot, meet the real evil, which is, in fact, successfully met only when the principals themselves are brought to justice.

Mahomed Ameeruddeen followed the usual policy and has consequently escaped, but Amjad Alli (prisoner No. 1,) his antagonist, displayed less caution and by personally heading his men has, in my opinion, fortunately for the public tranquillity, brought himself within the reach of the law. Contrasting the evidence in support of the *alibi* pleaded by him with the circumstance of his having been apprehended, as seems to me to have been the case, when following the dying man into the sudder station, and weighing against it at the same time the clear and consistent evidence of the witnesses who depose to having seen and heard him order his men to commence the fight, I can place no confidence whatever in his defence. There can be no doubt that he was at Soodharam when the wounded man arrived, but Soodharam is only six miles from the scene of the affray, and there could be no difficulty whatever in his travelling so short a distance in the time, or less than the time, which was occupied in bringing in a dying and helpless man. A noticeable feature in the evidence for the prisoner Amjad Alli's (No. 1's) defence in this. He is a man of respectability and doubtless, if residing at Soodharam, his presence there must have been known to many persons of corresponding position in native society. Instead, however, of supporting his defence by the testimony of men with whom he may have been supposed to have associated, and in whose statements the Court could have placed confidence, his *alibi* is maintained by witnesses of the lowest grade such as boatmen and frequenters of the *hal* or market, who pretend to recall to mind the precise and, of course, material day and date of having seen him under circumstances so trivial as not to be at all likely to fix either in their recollections.

The amount of aggression attributable to Amecruddeen and Amjad Alli seems to me, on careful consideration, to be about on a par, or if any difference exists, it is so trifling as scarcely to affect the degree of punishment to which their adherents have exposed themselves. On the one hand Amecruddeen knew perfectly well that Amjad Alli's (No. 1's) wife had obtained a summary declaration of her right to possession of a certain share of her and his own father's estate, and having instituted a regular suit to cancel that declaration, was bound to await the result. Instead, however, of so acting, he collected a band of fighting men and set the ameen sent to deliver pos-

session to his sister at open defiance. On the other hand, the fact of a summary decree having issued in his wife's favour in no degree justified Amjad Alli (prisoner No. 1,) in resorting to violence to give it effect. If his opponent chose to resist delivery of possession, Amjad Alli (prisoner No. 1,) should have left to the court by whom the ameen was deputed, the duty of enforcing obedience to its decree, and the task of punishing those who openly resisted its orders. But he chose to take the law, or rather its enforcement, into his own hands, and to seize those ryots by force whose attendance the ameen was unable to secure by virtue of his office.

The jury who assisted me in this trial, and who are Mahomedan gentlemen of high respectability, brought in a verdict of guilty against all the prisoners.

Moonshee Shurrafutoollah.  
Moonshee Golam Hyder.  
Moulvee Ekamut Alli.

Being myself of opinion, that the charge is substantiated against all the prisoners, and that the crime of which they are thus convicted call from its serious nature and frequent occurrence for exemplary punishment, I sentence them to the following terms of imprisonment.

No. 1, Amjad Alli, seven years' imprisonment with labor in irons, No. 2, Moteeoollah, No. 3, Meahjan, No. 4, Wajuddeen, No. 5, Dhon Gazez, No. 6, Rumezoolah, No. 7, Fakeer Mahomed, No. 8, Tumezuddeen, No. 9, Budderduddeen, No. 10, Chuni, No. 11, Daiemoollah, No. 12, Nonda Gazez, No. 13, Gonda Gazez, and No. 14, Amoo Putwarry each to five years' imprisonment with labor in iron.

It will be observed that I have made no exception in Amjad Alli's (prisoner No. 1's) case, as regards labor in irons. I have not done so because his ability to pay a heavy fine in lieu of labor with little or no personal inconvenience should not, in my opinion, give him an advantage over his fellow-prisoners whose criminality I rank some degrees lower than that of their principal, who may indeed be said to have brought them into the position in which they now stand. A distinction between rich and poor, where both have offended against the same law, is, in my opinion, alike inexpedient and unjust.

*Resolution of the Presidency Court of Nizamut Adawlut, No. 265, dated 6th April, 1857.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court observe, that the appellant Amjad Alli pleads that the distance, at which the witnesses who allege that they saw the affray and heard him give orders, were standing, was so great that it is impossible they could have heard what he said, or seen distinctly what they aver they saw. The witnesses state that they were two, three or four *kanees* distant; and the appellant urges that as a *kanees* in pergunnah Bulloah, zillah Noacolly, is, at the place where the occurrence took place, four beegahs, sixteen cottahs, the statements of the witnesses as

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to what they heard and saw, must be untrue. The *kanees* seems, from returns received from the Board of Revenue, to be a measure of very variable size in Tipperah and Noacolly; and the Court before passing orders in this case would wish to know exactly what distance the sessions judge understood to be meant, and what the witnesses indicated, when they spoke of *kanees*. In the evidence of some witnesses, the Court find the distance indicated by the distance from the sessions judge's court to his residence or out-offices, and the Court would wish to be informed what the distance is, and what number of feet a *kanees*, thus calculated, equals.

*From the Sessions Judge of Tipperah to the Register to the Court of Nizamut Adawlut, No. 125, dated 14th April, 1857.*

I have the honor to acknowledge the receipt of the Court's Resolution No. 265, dated the 6th instant, in connection with

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number.

the case noted in the margin,\*  
and to state in reply that natives  
in this part of the country have  
very indistinct notions of dis-  
tance, and in speaking of a *kanees*

do so with great carelessness and with little reference to the actual length of that measure of land. It is generally necessary to ask them to point out from where they stand some spot or object, the distance of which will convey an idea of the distance between the two localities of which they are speaking. In the present instance the godowns referred to by some of the witnesses are by actual measurement, effected with reference to the Court's enquiries, only sixty-four yards from the bench of the civil court, the house itself being also so close to the court that the features of a person standing in the verandah of the one building, are easily recognizable from the verandah of the other. The house is on the south bank, and the court on the north bank, of a small tank, and I walk daily from the one to the other in a few seconds.

2. I understood, and I have no doubt the witnesses meant I should understand, that the prisoner Amjad Alli was standing fifty or sixty yards from the scene of the affray. That they intended no reference to the Bhullooah Kharee is apparent from the fact that three of the *kanees* (to say nothing of four) in that pergunnah would measure, in length 1,728 feet, which is considerably more than a quarter of a mile, and it is impossible that any witness would so stultify himself as to depose distinctly to the facts and words of a man whom he described as standing out of his very sight.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) All the prisoners appeal. Nos. 1 to 8, on the pleas, which will be specified hereafter. Nos. 9 to 14, urge no special grounds, but refer to the record. The pleas,

advanced by prisoners Nos. 1 to 8, are 1st, The investigation has not been conducted as required by Section 18, Regulation XX. 1817, and therefore all the proceedings are illegal. 2nd, The prisoner, Amjad Alli, had no reason for causing an affray, nor is it probable that he was personally engaged in it. His wife had obtained a decree, and an ameen had been deputed to give possession. This ameen had been resisted in the execution of his duty by Ameeruddeen's people, and the case was under investigation by orders of the judge. 3rd, There are discrepancies and inconsistencies in the evidence which render it unworthy of credit. These consist of the contradictions made by each witness in his own evidence taken before the magistrate and sessions judge, as regards the position of the principal defendant, Amjad Alli, during the affray; and also of the difference on this point apparent in the statement of one witness compared with another; further as to the orders issued by the principal defendant, Amjad Alli, which at the distance the witnesses acknowledge themselves to have been standing, they could not have heard, and the purport of which they have variously stated; again in the discrepancy as to the place where the affray took place, and as to the junction of the two parties of Amjad Alli's people; also, in the improbability of the witnesses who live at so great a distance assembling at one spot, on hearing, as they allege, the noise, and arriving so exactly together, as that each should hear and see exactly what every other witness heard and saw; for had they, as asserted by them, been attracted by the noise which was made only *after* the affray commenced, it was impossible for them to have heard Amjad Alli give *orders* for the affray; lastly, in the contradiction in the deposition of Chunni, informant, taken before the darogah and deputy magistrate; as in the former, made shortly after the affray took place, he distinctly asserts that he *did not* hear the prisoner Amjad Alli give the order to kill Kazim; and in the latter that he *did* hear him, but was so distressed on account of his brother's death that he did not know what he said. 4th, The witnesses attempt to conceal the cause of the affray though aware of it: thereby shewing themselves to be not independent witnesses.

The Counsel concluded by urging that there were precedents of the Court to shew that when the name of an accused prisoner had been omitted in the original deposition to the police, the Court had directed the release of the prisoner.

On the *first* plea we observe that Section 18, Regulation XX. 1817, was enacted for the guidance of *Police darogahs*. The Joint-Magistrate took the matter out of the darogah's hands, and investigated the case himself; and though he may not have followed the course prescribed in the Section above quoted for darogahs, *his* proceedings were perfectly legal. As to the *second* plea; it may or may not have been improbable

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that Amjad Alli having his decree, should cause an affray, or should be present at the time; but we have the direct evidence of several witnesses, who depose to his being on the spot at the time, and giving orders. The Court have mainly to consider whether that evidence is trustworthy or not, and is or is not preferable to the bare hypothesis in this plea. As to the doubts suggested in regard to the discrepancies in the evidence, these may apparently exist in the statements made by the witnesses as to the position taken by Amjad Alli, as to the purport of the orders said to have been given by him, and as to the place where the affray occurred; but these discrepancies are either easily reconciled, or else are not of a character to throw discredit on the main evidence given by the witnesses as to the essential facts, viz. that there was an affray; that the partizans of the 7 and 9-annas sharers in the estate were the parties concerned; that the prisoners, and, among them, Amjad Alli, were present, and more or less concerned in the affray; that it took place on the public road; but whether a few yards more to the north, towards Lahoury tank, or a few yards more to the south near Gola tank, as stated by witness Reazdeen, does not alter the main facts shewn. Great stress has been laid by the Counsel for the prisoners upon the distances, which the witnesses say they came from, and at which they stood when they saw the affray. The Court in their *Resolution* of 6th instant No. 265, called for an explanation on this point from the sessions judge, which has been submitted, and which shews that this plea is untenable; and that the witnesses must have been about *fifty or sixty* yards from the place where the affray occurred. It is urged that as they were attracted by the noise which arose *after* the affray commenced, they could not have seen and heard what they assert they did *previous* to the commencement of the affray. The Court observe that the witnesses nowhere state that they were attracted to the spot by *the* noise of the *affray*, but by *a* noise; it might be such as is heard when many people are assembled. What were the exact words that proceeded from Amjad Alli's mouth is comparatively immaterial. The witnesses prove that he was there, and giving orders to and encouraging his party to fight. The discrepancy noted in the deposition of Chooni Jemadar before the darogah and joint-magistrate does not affect the credibility of his evidence, as to the presence of Amjad Alli at the time of the affray. Had this witness altogether omitted to mention the name of Amjad Alli in his first information to the darogah, there might possibly have been some plea for urging that Amjad Alli's name had subsequently been collusively introduced. Now in that first information Chooni distinctly states that Amjad Alli was present; but that the witness did not hear him give orders to kill Kazim Putwarry; and, on going the same day to the joint-magistrate with his

wounded brother, he distinctly stated that Amjad Ally was present at the affray, and had followed him to Soodharam; and on his representation, orders were issued for the apprehension of Amjad Alli, and he was apprehended in Soodharam. It is pleaded in the last place that the witnesses cannot be considered independent, because they have attempted to conceal the cause of the affray, which, however, is notorious. The witnesses, however, are not obnoxious to this charge. They stated before the joint-magistrate what was the *original* cause of the affray, viz. the disputes between the shareholders; and what they stated to the sessions judge related apparently only to the *immediate* cause of the affray. A counter-charge has been advanced by Moteullah, prisoner No. 2, and others that Amjad Alli's cutcherry was attacked by the servants of Ameerooddeen, headed by Brindabun Dewan, but this charge is completely refuted by the evidence of the witnesses Nos. 10, 11 and 13, taken before the joint-magistrate, which the counsel for the prisoners required to be read. We see no sufficient cause for interfering with the sentence passed by the sessions judge, and therefore reject the appeals.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

NYMOODEEN\* ALIAS NANOO KAZI (No. 16,) AMEER-ROODEEN\* (No. 17,) ZAFUR AKOOND\* (No. 18,) TORAB ALEE KAZI (No. 19,) KOMUR ULLI KAZI (No. 20,) ZUHEER (No. 21,) SHEIKH NUJJOO (No. 22,) AND KISHEN CHUNDER GOOHO (No. 23.)

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CRIME CHARGED.—1st count, wilful murder of Muddun Moollah; 2nd count, affray attended with the culpable homicide of Muddun Moollah.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 29th of August, 1856.

*Remarks by the Sessions Judge.*—I tried this case with the assistance of a jury. The jury acquitted the prisoners Nos. 18, 19 and 20, and found the prisoners Nos. 16, 17, 21, 22 and 23 guilty on the second count of the calendar. I would acquit the prisoners Nos. 16, 17 and 18, and convict the prisoners Nos. 19, 20, 21, 22 and 23 of the following crime, viz. "Riot-

Riot and killing with gunshot. One prisoner released; the others convicted; pleas of counsel being overruled. Remarks on record of local investigations by magisterial officers.

\* Acquitted by the Sessions Judge.



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ous attack at night on the house of Omed Alli Cazee, attended with the wilful murder of his servant Muddun Moollah," and would recommend as an adequate punishment that Nos. 19 and 20, be transported for life and that Nos. 21, 22 and 23, be imprisoned with labor in irons for fourteen years in the zillah jail.

The Court will observe, that the Magistrate considered this case to be one of mutual affray. I hold that it is clearly a one-sided affair, and that the deceased met his death while defending his master, Omed Alli Cazee's house, against the wanton attack made upon it at night by the prisoners Nos. 19 and 20, and their party.

To place the Court, in possession of my view of this case, I must necessarily enter into some detail.

It appears, that Omed Alli Cazee and the prisoners No. 19, Torab Alli, and No. 20, Komur Alli, are relations. The prisoner's two brothers, are nephews of Omed Alli Cazee. The three parties live in one homestead separated by a mat screen or *tattee* which divides the "*barree*." I believe, I am justified in stating, that for a long time a land-feud has existed between the parties.

On the 11th of April last, Azgur Moollah, brother of the man who was murdered, lodged a complaint at the thannah, stating, that on the preceding night at about 3 A. M. the prisoners No. 19, Torab Alli, and No. 20, Komur Alli, with their party and amongst them the prisoners Nos. 21, 22 and 23, attacked the house of Omed Alli Cazee; that the deceased who was a "*nigaban*" in the service of the aforesaid Omed Alli Cazee, and one Ameeruddin also in the service of Omed Alli attempted to oppose the entrance of the prisoners: that Torab Alli, prisoner No. 19, ordered Komur Alli prisoner No. 20, to fire, and Muddun Moollah was shot by the said prisoner No. 20, in the abdomen; the murdered man lived a few hours. The deponent further stated, that nobody else was wounded or in any way injured in the attack; the reason for this attack was stated by the deponent to be a suspicion on the part of Torab Alli No. 19, and Komur Alli No. 20, that a complaint lodged in the Magistrate's Court by the son of one Zuheer a ryot of the prisoner's respecting the illegal confinement of the said Zuheer had been instigated by Omed Alli Cazee.

Shortly after, and on the same day that the above complaint was lodged at the thannah by the brother of the murdered man, a counter-charge was preferred by the prisoner No. 19, Torab Alli, to the effect that on the previous night, Omed Alli Cazee the murdered man Muddun Moollah, Azgur Moollah, Ameeruddin and others had attacked the houses of the prisoners Torab Alli and Komur, Alli with the intent of committing a "*dacoity*." Torab Alli in this statement avers that he left his house

from fear, that he cannot say what followed the attack, and that he is unable to account for the death of Muddun Moollah. The cause given for this alleged attack with intent to commit a dacoity on the part of Omed Alli Cazee and his party, given by Torab Alli at the thannah, is the long standing feud respecting land between him and Omed Alli Cazee. No mention whatever is made of Zuheer or of his alleged confinement.

The prisoner No. 20, Komur Alli, in his answer at the thannah, denied attacking the house of Omed Alli, and stated that he was unable to say how Muddun Moollah met with his death. On being questioned as to the charge of murder brought against him by the brother of the deceased man, he stated that Omed Alli and his party attacked his house on the night of the 10th of Bysack with lighted torches; that he ran away at once, and was unable to say what followed, that early the next morning he returned to his house, found a *petarah* broken, and a percussion gun which used to be kept in the cutcherry, lying in the court-yard on the ground. That the charge preferred by the servant of Omed Alli was a counter to the prisoner's charge of dacoity.

Thus far the Court will doubtless observe that the case is not represented even by the parties themselves as a "mutual affray." Each party makes a distinct charge. Omed Alli's party of a riotous attack on his house attended with the murder of his servant; and Torab Alli's party of an attempt at dacoity in his house. I also request the Court to notice that Torab Alli in his plaint at the thannah, and in his defence before the Magistrate, and Komur Alli in his defence before the Magistrate did not in any way infer that Zuheer was the cause of the attack on their houses. This must be borne in mind, for subsequently the Magistrate in committing both parties clearly infers, that Zuheer was the cause of the alleged mutual affray attended with loss of life.

I would observe, that the police enquiries as far as they go, clearly evince that the thannah officials considered the case to be a one sided one, and not a mutual affray. The darogah sums up his enquiries by expressing a decided opinion that the attack on the house of Omed Alli Cazee by Torab Alli, Komur Alli and others, and the death of Muddun Moollah from a gun-shot wound, the gun being discharged by the prisoner Komur Alli, were clearly proved against those parties. This report is dated the 8th May or nearly one month after the occurrence of the crime. So that the darogah had ample time to collect and sift the evidence in the case.

On the 26th of April, the Magistrate held a proceeding on the spot. He observed that it was necessary to enquire into the truth of the statement of the prisoner Torab Alli in the matter of the attack on his house with intent to commit dacoity, by

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the plaintiff, Omed Alli Cazee and others, and further, that it was clear that Muddun Moollah had been murdered by shot discharged from a gun in the hand of the prisoner Komur Alli, it was therefore necessary to search the house of the said Komur Alli for powder and shot. The Magistrate in furtherance of these intentions in presence of certain parties alleged to be respectable, searched the house of the prisoners and found two broken *petaraks* covered with leather. It does not appear to the Magistrate that these *petaraks* had been forcibly broken open, nor did he observe any signs of plunder. Moreover, the Magistrate observed that he found a chest locked, that on asking the prisoner Komur Alli for the key of it, he made various excuses for non-production, that on pulling at the lid, it came off by the hinges; the contents of the chest were found to be some coarse papers. Further, that as the darogah considered the crime proved against Zulceer and Nujjoo and had apprehended them, and as the evidence taken before the Magistrate proved it too, he ordered their defence to be taken. The plaintiff and his witnesses were placed on recognizances.

On the 26th of April, the Magistrate on the spot recorded the depositions and evidence of the parties noted in the

- \* No. 1, Uzgur Moollah.
- „ 2, Omed Alli Cazee.
- „ 3, Nymuddi.
- „ 4, Jafur Akund.
- „ 5, Ameeruddin.
- „ 6, Surfutoollah.
- „ 7, Reziioollah.
- „ 8, Korban Bebee, wife of deceased
- „ 9, Aymoollah, father of deceased.
- „ 10, Bageo Chung, Chowkeedar.

margin.\* This evidence in my opinion clearly establishes that the case is not one of affray in which the deceased met his death, but of riotous attack on the house of Omed Alli Cazee in which the deceased while defending his master's house was wilfully murdered, and on this evidence I would convict the prisoners. I

have already observed that the police considered the case to be not one of mutual affray, further from the proceeding of the Magistrate dated the 26th April, held on the spot, it is clear that he was then of the same opinion and that up to that date Omed Alli's party was the prosecuting party.

There is nothing on the record which would enable me to give any good reason for the change of opinion, I must therefore seek the cause in the observations of the Magistrate in the statement of commitment which are as follows:

“The witnesses first examined by the police in their local investigation, and who were first produced before the Magistrate when he visited the spot where the affray was committed, deposed to having seen Omed Alli Cazee's house attacked at dead of night by prisoners No. 19 and 20, and others, and also to having seen prisoner Nos. 20, with his own hands fire a gun

and kill therewith Muddun Moollah, but from the evidence of the witnesses subsequently examined, and who are named in column G of this calendar, and who from the propinquity of their dwellings to the houses of Omed Alli Cazee, and prisoners Nos. 19 and 20, and other circumstances, are very good and credible witnesses, it is, in my opinion, proved that Omed Alli Cazee, and his followers, among whom were some of the witnesses first examined, attacked the house of prisoners Nos. 19 and 20, for the purpose of forcibly rescuing one Sheikh Zuheer, son of Manick (witness No. 3,) and that then the retainers of prisoners Nos. 19 and 20, assembling, an affray ensued, in which affray Muddun Moollah on the side of Omed Alli Cazee was killed by gun-shot. The cause of the affray is clearly shewn in the depositions of witnesses No. 3, Sheikh Zuheer, and No. 19,\* Sheikh Musurooddin son of Sheikh Zuheer."

Why these witnesses who are described as good and credible, and who reside near the houses of the two parties in this case, were not examined by the police or by the Magistrate on the spot, I am at a loss to account for. Amongst the witnesses first examined by the Magistrate on the spot is Zafur Akoond who was subsequently turned into a prisoner No. 18, on the evidence of the witnesses subsequently examined. It is very strange that this very Zafur Akoond was named as a witness by both parties in their first statements lodged at the thannah. It is therefore manifest that this man could not have been engaged in a "mutual affray;" had such been the case he never would have been named as a witness by both parties. The jury could not but acquit this prisoner, though if the evidence of the witnesses for the prosecution be "good and credible," this man is equally guilty with Nos. 16 and 17, whom the jury convict.

The Magistrate states that the cause of the attack on the houses of the prisoners Nos. 19 and 20, was for the purpose of rescuing one Sheikh Zuheer,\* but this supposition is not borne

\* Witness No. 3.

out by the facts of the case, for I have above observed that Zuheer's name is not mentioned at all by the prisoner No. 19, in his statement made immediately after the occurrence of the crime before the police, nor in the defence of Nos. 19 and 20.

I shall hereafter shew that this Zuheer was subsequently introduced by the prisoners Nos. 19 and 20, to give a two-sided aspect to the affray, and to reduce their crime to culpable homicide at the utmost, instead of wilful murder.

I now proceed to comment upon the evidence for the prosecution. The witness No. 1, Azmutoollah, whose foudary depo-

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\* The evidence of the witness No. 19, was not taken in this Court, he being too young to understand the nature and responsibility of an oath.

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sition, it appears, led to the examination of other witnesses, states in my Court that hearing a noise in the direction of the houses of the Cazees, he and his guest Zuheer, witness No. 5, and witness No. 4, Mohun Shah a neighbour, went together to the houses of the Cazees to see what was the matter; that on their way there, they met the prisoner No. 19, Torab Alli, who informed them that his house was being plundered by Omed Alli and his party. Now if this were true, why were these three men not named as witnesses by the prisoner No. 19, in his statement before the police, and in his defence before the Magistrate. The Court will also not fail to observe that though the owner of the house is so alarmed, that he dared not return to his house with the three witnesses, they proceed there and in a way thrust themselves into a quarrel with which they apparently had no concern. Is this like the native character? Is it not notorious that when a dacoity or robbery is committed the neighbours studiously keep out of the way, either from cowardice or from fear of being made a witness?

The witness Azmutoolah further deposes to having questioned the dying man, Muddun Moollah, through Mohun Shah, witness No. 4, and that Muddun replied that men of both parties had guns in their hands, and that he was unable to state who had shot him. Is this at all probable? it must be remembered that Muddun Moollah was the servant as well as a connection of Omed Alli, is it likely that being in a dying state he would make such a speech, is it not much more probable that he should name Komur Alli, or at all events his party, as the cause of his being wounded? Moreover this version of the statement of the dying man does not agree with that given by Zuheer chowkeedar before the Magistrate, in which he deposes, that the dying man said that "he could not say who had shot him, but that the prisoners Torab Alli No. 19, and Komur Alli No. 20, had come with others."

This witness further deposes, that he saw Munirooddi Kalifa on the part of Torab Alli and Komur Alli, and Mohun Sirdar on the part of Omed Alli Cazees standing with guns in their hands. This is stated to give colour to the story that the affray was a mutual one, for it is quite impossible to believe that the above parties would remain standing with guns in their hands when all the other parties said to be concerned in the affray had run away. The Magistrate made enquiries on the spot which elicited the fact of there being only one gun in the village, that belonging to Komur Alli. Mohun Khan is the son-in-law of Omed Alli; this accounts for his being named as having a gun in his hand. Further, this witness states that prisoner No. 23, Kistochunder Goocho, on the part of Torab Alli and Komur Alli, was wounded over the eye. There is cer-

tainly an old scar over the eye of the prisoner, but that he was wounded, though present in the attack on the house of Omed Alli Cazee, there is no trustworthy evidence to prove. Even the Magistrate does not credit this portion of the story, had he done so, he would doubtless have committed on a charge including the wounding of prisoner No. 23.

This witness admits that he did not see Zuheer on the night of the alleged attack upon the house of the prisoners Torab Alli and Komur Alli, though this man is said to have been the cause of the said attack. In my court it has been proved, that this witness No. 1, is defendant in a civil case in which Omed Alli Cazee is plaintiff, and which is still pending in special appeal before the Sudder Court.

This witness, on being asked by the Magistrate to account for his absence from his residence when the Magistrate visited the spot, stated that he left from fear and went to the house of one

\* No. 33, Gooroo Doss Shah, Imam Buksh gomashita; now it is in evidence,\* that this Imam

Buksh in conjunction with Gooroo Doss Shah, did receive from the prisoners Torab Alli and Komur Alli, on a date subsequent to this case, a Neem Osut talookdaree pottah at an annual jumma of rupees 20 for the trifling consideration of rupees 60. The witness Azmutoolah being an enemy of Omed Alli Cazee has, in my opinion, been brought forward as a material witness in this case, by the aforesaid Imam Buksh, to give a two-sided appearance to the case: for in no other way does the witness, or can I, account for his going to Imam Buksh's house immediately after the occurrence of the crime.

This witness too, in his deposition before the magistrate, first stated that he saw the prisoners Torab Alli and Komur Alli in the affray, on being asked to identify the persons who were present in Court, he qualifies his former statement by saying, that he did not see the above-named prisoners in the affray.

I would also observe that if the evidence for the prosecution be credited, there were no grounds justifying the committal of the prisoners Torab Alli and Komur Alli, for not one of the witnesses states that these parties were engaged in the affray. On the contrary they depose to not seeing them and some of them state that they met Torab Alli going away from his house immediately after the alleged attack upon it by Omed Alli Cazee and his party.

The witness Zuheer No. 5, who states he was a guest of the principal witness Azmutoolah on the night of the crime, is the own brother of the witness No. 14, Zuheer chowkeedar, living in the same house with him. From the evidence of Zuheer chowkeedar it appears, that the witness No. 5, Zuheer had late on the evening of the crime, eaten his dinner at home, so that the state-

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ment made by the witness Zuheer that he ate his dinner at Azmutoollah's, and that it being late he remained that night in his house cannot be credited. Further as the house of Zuheer is close to the house of Azmutoollah, there was no necessity whatever for the former remaining that night in the house of the latter.

The main points of the evidence of the witness No. 8, Zuheer, son of Manik, in this Court are as follows. That he is the ryot of the prisoners Nos. 19 and 20; that in Phalagoon last they wished to locate a ryot by name Zuheer, the prisoner in this case, No. 21, on the homestead occupied by the witness; that the witness objecting to this, his house was plundered by the prisoners Nos. 19 and 20; that the witness complained in the foudjary Court, and that a *subpana* was issued; that on his return to his home to secure the attendance of his witnesses, he was seized by the prisoners Nos. 19 and 20, and kept by them in confinement up to the date of the occurrence of the alleged affray; that on that date, in the evening, a conversation took place between Omed Alli Cazee and Torab Alli Cazee, which was overheard by the witness, to this effect. Omed Alli said, You have kept Zuheer (witness) in "*keid*," his son has petitioned for his release and a *burkundaz* has been here to release him, the wife of Zuheer has placed herself under my protection, and I have promised to release him. Torab Alli replied, Zuheer is my ryot and I have brought him here, why do you object? After this conversation, the witness deposes that Omed Alli Cazee returned to his house; that about 3 A. M. that night, Omed Alli Cazee with about twenty-five men came into the court-yard of Komur Alli Cazee's house; that the witness was in charge of two *peadahs*, names unknown. Five or seven men, ryots and *luttials*, who were sleeping in Komur Alli's cutcherry got up and a stick-fight ensued between the two parties; that the witness heard the noise of the sticks though he could not see the parties fighting; that he then heard the report of a gun. The *peadahs* who were in guard over me told me that Muddun Moollah on the side of Omed Alli Cazee and Kistochunder Gooloo on the side of Komur Alli had been wounded, and that Monirooddeen and Mohun Khan had guns in their hands; that the *peadahs* then observed to the witness that they could no longer remain there; that they ran off, as did the witness who went first to his own house, I did not know of the Magistrate's visit to the place until the day he left; I did not appear before the *darogah* for fear he should act unjustly towards me; I did not receive a *pottah* of land from the prisoners Komur Alli and Torab Alli, subsequent to the affray, nor have sold my title under the *pottah* to the witness Mahomed Haneef.

I would again call the attention of the Court to the fact, that if this man's story be true, doubtless Torab Alli in his statement

before the thannah would have mentioned this witness's name as the cause of the alleged attack on his house.

Before the Magistrate this witness first deposed that he himself saw two guns in the hands of men of both parties, he then deposed that he did not see the guns. In the Magistrate's court he deposed to seeing Torab Alli and Komur Alli at the time of the affray, in my Court he leaves out their names altogether.

The evidence of this witness was not taken in the Magistrate's Court until the 15th of May, though the affray took place on the 21st April. Surely, if he had been the real cause of the affray, his evidence would have been taken before.

I find on referring to the foudary record, that the Magistrate passed an order on the petition of the son of this witness on the 24th of March last, directing his police to release the witness from captivity. The darogah reported that he sent a burkundaz who proceeded to Torab Alli's house; that he did not find Zuheer there, and that without further enquiry the darogah was unable to state whether Zuheer was really in confinement or not. On the 7th of April the darogah was directed to enquire further and to send in Zuheer.

On the 27th April or after the occurrence of the alleged affray, the darogah states that from enquires and rumour it was his opinion that Zuheer had never been in confinement at all.

It is so obviously the interest of the prisoners Nos. 19 and 20 to represent this case as a mutual affray in which Muddun Moollah lost his life in the *melee*, that the Court will not be surprised when I inform them, that it is clearly proved that on the very day the witness Zuheer gave evidence in the Magistrate's court that the affray was a mutual one, the prisoners No. 19, Komur Alli and No. 20, Torab Alli gave him a "*kaimie*" pottah for five beegahs, three cottahs, which he sold to Mahomed Haneef. This fact is proved by the evidence noted

\* Bogwan Chunder Sein.  
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in the margin,\* and the production in my Court of the pottah and inspection of the register's

books in which the deed of sale to Mahomed Haneef is registered. Clearly this witness has been brought over, and I am bound to say that I place no credit whatever in his statement.

The witness No. 14, Zuheer Chowkeedar, before the Magistrate and before my Court gives a different version of the dying declaration of Muddun Moollah; in the Magistrate's court he gives the more probable version to wit, that though the dying man could not say who shot him, that Torab Alli and Komur Alli with their people had attacked the house. Further, in the foudary deposition he said, the report of the gun proceeded from out of the house of Omed Alli; before my Court he states, that the report proceeded from the direction of the houses of the Cazees.

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The medical officer deposes, that he found shot marks in the abdomen and lower part of the thorax, and that shot was extracted by him from the liver, kidney, and heart. These injuries caused speedy death.

The defence in this Court of the prisoners whom I would convict is as follows :

No. 19, Torab Ali urges that he is not guilty ; that his witnesses will prove that at the time of the affray he was at the house of Gooroo Dass.

Gooroo Dass, witness No. 33, states that one night, date he cannot remember, the prisoner came to his house and said, My uncle Omed Ali Cazee has attacked my house ; I cannot tell what may happen, do you go and see. I said, I am ill ; tell the chowkeedar. I then heard the report of a gun. I cannot say where the prisoner went then. I and Imam Buksh received a pottah from the prisoner after the affray, or about ten days ago.

Surfoollah, witness No. 34, says he was in the house of Gooroo Dass on the night of affray, supports evidence of Gooroo Dass and deposes that he is the son-in-law of Imam Buksh.

I would observe that in his defence before the Magistrate, the prisoner states that directly his house was attacked by Omed Ali Cazee and his party, he left it from fear, and went to Komoremara where he supposed the police jemadar to be engaged in a local enquiry, not a word is said about going to the house of Gooroo Dass, nor is the name of this party mentioned by the prisoner as a witness to his defence. I have already stated that Gooroo Dass and Imam Buksh received a pottah on very favourable terms from the prisoner and Komur Ali. The other witness to the defence is the son-in-law of Imam Buksh.

Such evidence is utterly untrustworthy. I hold that the prisoner is clearly guilty and as he took a leading part in the riotous night attack on the house of Omed Ali Cazee, and in the wilful murder of the deceased, Muddun Moollah, by instigating Komur Ali to fire at him, I would suggest that he be transported for life.

The prisoner Komur Ali, No. 20, urges that Omed Ali and his party attacked his house ; that from fear he ran to a garden near his house and there remained, and that his witnesses will prove this.

The three witnesses who have been examined for the defence of this prisoner, certainly state that they met the prisoner in the garden on the night of the alleged affray, and that after meeting him they heard the report of a gun ; but two of these witnesses are near relations of the prisoner, they say they came in a boat to visit the prisoner, it is strange that they should arrive just in the nick of time, and still more strange that the prisoner after meeting his near relations, and being as he alleges in a state of fear, should not have returned with them to their

boat. Moreover, in his defence before the Magistrate he names other witnesses to his defence and does not even allude to his meeting with the witnesses who have deposed in his favour in this Court.

I consider this prisoner guilty, and my only reason for not recommending capital punishment is the fact, that he appears to have been urged on to the commission of the murder by the prisoner Torab Alli. I would sentence him to transportation for life.

The prisoner No. 21, Zuheer, refused to have the evidence of the witnesses to his defence recorded; he is, in my opinion, clearly guilty of aiding and abetting in the riotous attack upon the house of Omed Alli and in the murder of Muddun Moollah, and I would sentence him to fourteen years' imprisonment with labor in irons in the zillah jail.

The prisoner No. 22, Sheikh Nujjoo, also refused to have the evidence of the witnesses for his defence recorded. My remarks on prisoner No. 21, apply to this prisoner. I suggest the same sentence.

The prisoner No. 23, Kishen Chunder Goocho, states he was a servant of the prisoners Torab Alli and Komur Alli, but that he has been discharged from their service. The three witnesses examined for his defence give hearsay evidence. It is clearly proved that this party was present aiding and abetting in the riotous attack on the house of Omed Alli Caze and in the murder of Muddun Moollah. I would therefore suggest that he be sentenced to fourteen years' imprisonment with labor in irons in the zillah jail.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.)

Counsel for prosecution, Baboo Sumbhoonath Pundit, Junior Government Advocate. Counsel for prisoners, Nos. 19 and 20, Baboo Anodaparsaud Banerjee.

This case was *remanded* by this Court. (Present: Messrs. J. S. Torrens and C. B. Trevor.) on the 8th November last, in order that the evidence of certain witnesses not taken before the Sessions Judge, although taken before the Magistrate, might be taken before the Sessions Judge. The case has been submitted by the Sessions Judge, the order on the remand having been executed.\*

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\* *Resolution of Nizamut Adawlut, No. 952, dated the 8th November, 1856.*—(Present: Messrs. J. S. Torrens and C. B. Trevor.)

The Sessions Judge in this case has acquitted the prisoners Nos. 16, 17 and 18, but has convicted the prisoners Nos. 19, 20, 21, 22, and 23, of a riotous attack at night on the house of Omed Alli Caze, attended with the wilful murder of his servant Muddun Moollah, and he recommends that Nos. 19 and 20, be transported for life and that Nos. 21, 22 and

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We will proceed first to state the facts as to which there is no question; and then those on which doubt and difficulty arise,

23, be imprisoned with labor and irons for fourteen years in the zillah jail.

The Court observe, that the persons acquitted and the prisoners convicted by the Sessions Judge, were all committed on the 1st count, for the wilful murder of Muddun Moollah, and on the 2nd count for affray attended with the culpable homicide of Muddun Moollah.

In the 12th paragraph of his report the Sessions Judge writes as follows: "On the 26th of April the Magistrate on the spot recorded the depositions and evidence of the parties noted in the margin.\* *This evidence in*

\* No. 1, Ugur Moollah.

" 2, Omed Alli Cazee.

" 3, Noymuddee,

" 4, Jafur Akund.

" 5, Ameerruddeen.

" 6, Surfutoollah.

" 7, Reziioollah.

" 8, Korban Bibee, wife of deceased.

" 9, Aymoollah, father of deceased.

" 10, Bageo Chung, chowkeedar.

*my opinion clearly establishes that the case is not one of affray, in which the deceased met his death, but of riotous attack on the house of Omed Alli Cazee, in which the deceased, while defending his master's house was wilfully murdered, and on this evidence I would convict the prisoners."*

On reverting to the record, the Court find that the evidence of none of the above-mentioned parties has been taken *before the sessions judge*. Moreover the Court find that Noymuddeen *alias* Nanoo Kazee, Ameerruddeen and Jafur Akoond were committed for trial; that Noymuddeen *alias* Nanoo Kazee and Ameerruddeen were found guilty by the jury of a riotous attack attended with culpable homicide; and Jafur Akoond was acquitted by them of that crime. The Sessions Judge, however, releases all these, being of opinion, as before observed, that the crime committed was not an affray, but a riotous attack with murder.

Under those circumstances the Court feel that it is impossible to dispose of the case until the evidence of those persons, upon which the Sessions Judge relies, and which was taken before the Magistrate, he also legally taken before that officer himself. The Court therefore return the record of the case to the Sessions Judge, with instruction that he will re-assemble the jury; take the evidence of all the witnesses above named; take also a fresh defence from the prisoners, and re-submit the trial with any additional remarks that he, on consideration, may think fit to make.

Extract paragraphs 2 to 8 of a letter No. 2 dated 10th January, 1857 from the sessions judge of Backergunge, submitted *in reply to the above Resolution*. In obedience to the orders of the Court conveyed in their

\* Ugur Moollah.

Omed Alli.

Noymuddeen *alias* Nanoo Kazee.

Ameerruddeen.

Shurfioollah.

Razioollah.

Bluggo Chowkeedar.

Musst. Korbanee, wife of the deceased.

Addoo Moollah, father of the deceased.

Resolution No. 952, dated the 8th of November last, I re-assembled the jury and on the 6th and 7th instant, took the evidence of the witnesses noted in the margin,\* as also a fresh defence from the prisoners; and have the honor to resubmit the record of the trial for the final orders of the Court.

with reference to the evidence on the record, to the Sessions Judge's opinion on the case, and to the pleas of the counsel for the defence.

The facts, as to which there is no question, are, that there was an ill-feeling between Omed Alee and prisoners Nos. 19 and 20, about a dispute relative to land, and also about the detention of one Zuheer, a ryot, by prisoners Nos. 19 and 20;—that on the night of the 21st April, there was a collision of some kind in which armed partizans of either side were more or less concerned;—that the deceased was a servant of Omed Alee, and was killed in that collision by a gun-shot wound;—that a gun was picked up next day near the cutcherry of Torab Alee,

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2. The jury acquit prisoners Nos. 19, 20 and 23, and convict prisoners Nos. 21 and 22, of affray attended with the culpable homicide of Muddum Moollah.

3. I agree with the jury in their acquittal of the prisoner No. 23, Kishenchunder Goocho, and differ from them as to their verdict with reference to the remaining prisoners.

4. I would solicit the particular attention of the Court to my report No. 36, dated 11th September last, with which I first submitted this case; and in which to the best of my ability I have given an account of it and have fully stated my views of the criminality which attaches to the prisoners. I wholly adhere to the opinions expressed in that report, and convict the prisoners of the following crime, and recommend the following sentences.

5. I convict the prisoners Nos. 19, 20, 21 and 22, of a riotous attack at night on the house of Omed Ali Kazee attended with the wilful murder of his servant Muddum Moollah, and would recommend that the prisoners Nos. 19 and 20, be transported for life and that Nos. 21 and 22, be imprisoned with labor and irons for fourteen years in the zillah jail.

6. I would acquit the prisoner\* Kishenchunder Goocho, because I am of opinion that the evidence of the witnesses named in the margin of paragraph 1st of this letter is not sufficient for the conviction of the prisoner. It would appear that there are two Kishenchunder Goochos, and from the evidence it is more than doubtful whether the Kishenchunder Goocho who has been committed in this case is the Kishenchunder Goocho who was really concerned in the attack on the house of Omed Ali Kazee. This fact of there being two parties bearing the name of Kishenchunder Goocho has come out for the first time in this court, and I am bound to give the prisoner the full benefit of the doubt.

7. Until the orders of the Court are received the prisoner No. 23, Kishenchunder Goocho, will remain in the *hajat*, as I do not consider myself competent to direct his unconditional release having previously convicted him, and recommended him for punishment, but seeing reason after recording and considering the evidence of the witnesses named in the margin of paragraph 1st of this letter to change my opinion, I deem it my duty to state my reasons for arriving at a different conclusion respecting the guilt of this prisoner.

8. With these remarks I leave the case of the prisoners in the hands of the Court. A petition embodying all they have to urge in their defence will be found with the record.

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and Komur Alee, and that that gun was the property of Komur Alee.

Before entering upon the points upon which doubt, and difficulty arise, we would premise that the occurrence took place on the 21st of April; that the first information was given at the thannah, on the 22nd, about midday, by Ashgur, the first of the witnesses who were examined by the Sessions Judge, on the remand of the case by this Court; and that the evidence of that witness, and also of the rest of the witnesses similarly examined, was taken by the Magistrate in person on the spot, on the 26th April. It appears too that the Magistrate, considering this a case of mutual affray with murder, against prisoners Nos. 16 to 23, committed it, as such, on the evidence of the witnesses Nos. 1 to 15 entered in the Calendar, before the remand by this Court; and the Magistrate did not act upon the evidence of the witnesses who deposed before him, on the spot on the 26th April, nor enter their names in the Calendar; but the Sessions Judge considers the case one of riot with murder on the part of prisoners Nos. 19, 20, 21 and 22.

The Junior Government Advocate relies on the evidence taken by the Magistrate on the spot on the 26th April, and by the Sessions Judge on the remand, as it is corroborated by the circumstances of the case, and thus supports the view taken by the Sessions Judge.

The Counsel for the prisoners Nos. 19 and 20, bases his pleas upon the main argument that there was no riot on the part of his clients or their people, but that their premises were attacked by the party of Omed Alee, and that whatever they did was done justifiably in self-defence; also that there is no sufficient evidence to shew that either of his clients fired the gun which caused the death of the deceased. The pleas in detail will be noticed in a later part of our judgment.

Thus the question for decision is whether prisoners Nos. 16, 17, 18, 19, 20, 21, 22 and 23, are guilty or not guilty of *mutual affray with murder*, as charged by the committing officer in his Calendar of commitment, on the testimony of witnesses Nos. 1 to 15, of that Calendar; or whether prisoners Nos. 19, 20, 21, 22 and 23, are guilty or not guilty of *riot with murder* as found by the Sessions Judge. (with a reservation as to No. 23,) on the testimony of the witnesses whose evidence has been taken by the Sessions Judge on the remand.

After a careful consideration of the record, and of the oral pleadings, we are of opinion that the finding of the Sessions Judge is correct; and we have formed that opinion on the ground that the evidence in favor of that view is the best in itself, and best supported by the independent facts of the case, on the record.

We have to remark, in the first place, that the testimony of

the witnesses Nos. 1 to 15, bears strong internal appearance of being tutored, from the over-precise similarity of the depositions, and the order and manner of narration, e. g. each of these deposes to the single fact of prisoner No. 23, one of Torab Alee's people, having been seen by them, wounded, with his hand to his head, and heard explaining the character of his wound, though they do not depose so precisely to any other one small detail. Now it is doubtful whether prisoner No. 23, was wounded at all in this affair, and whether the mark was not that of an old wound; and it is also doubted by the Sessions Judge whether prisoner No. 23, was concerned at all. The testimony of these witnesses is also inconsistent, for it speaks of Mochun, on the part of Omed Alee, as armed with a gun, and Monerooddeen (not a prisoner) on the part of Torab Alee, also so armed. Now there is clear evidence on all sides of there having been one gun and that one fired, and there is no evidence of any other than Kurm Alee's being in the village. It does not at all clearly appear that Omed Alee had possession of one.

These witnesses also speak of the attack and plunder of Torab Alee's premises; while the Magistrate's proceeding of 26th April, shews that his personal investigation resulted in no proof of this, and in no discovery of the ordinary indications of such, on the premises.

As to the evidence of witness No. 3, Zuheer, whose detention by prisoners Nos. 19 and 20, is patent throughout, we consider it open to much suspicion. The prisoner's Counsel lays much stress on it, as shewing that because Zuheer himself deposes to having been in detention at Torab Alee's on the night of the 21st April, and it is clear that Omed Alee had agreed, at the instance of Zuheer's wife and son, to consider him his *protege*, (*zima*) and had demanded him from Torab Alee early that evening, the motive for Omed Alee to attack Torab Alee's premises was obvious; whereas, under such circumstances, Torab Alee could have had no motive to attack Omed Alee's premises. But we are not satisfied that in this Zuheer states truly. No witness saw him that night; and it is in evidence that Torab Alee was under the impression that Omed Alee had sheltered him as a refugee from his, Torab Alee's custody, and that this was one motive of Torab Alee's attack. And this Court consider this view better sustained by the evidence than that indicated in the deposition of Zuheer, and of the other witnesses Nos. 1 to 15.

We think it needless to lay much stress on the matter of the *pottah* said to have been given to this witness, in connection with his evidence; (vide para. 32, of the letter of the Sessions Judge) or on the pleas of the Counsel for prisoners Nos. 19 and 20, against the Sessions Judge's view; for we would rather judge of the evidence in the first instance by the independent

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circumstances by which it is corroborated or contradicted, than weigh it with reference to the considerations, alleged to have influenced the witnesses. But we may observe that the Sessions Judge records that the *pottah* was produced, which the Counsel and prisoners Nos. 19 and 20, denied.

We now come to the evidence of the witnesses taken by the Sessions Judge, on the remand by this Court, on the 8th November. It is objected by the Counsel for the prisoners that these witnesses necessarily depose to Torab Alee and Kurm being the wrong doers, as two of the six. Nymooddin and Ameerooddin, are prisoners in the Calendar; as Omed Alee is obviously a person who must in the end be proved the wrong doer, if he can not secure the contradiction of the evidence of witnesses Nos. 1 to 15; and that he is far too patently interested to be regarded as an impartial witness; while the other two witnesses were his partizans in the attack on the premises of prisoners, Nos. 19 and 20.

In regard to these pleas we must observe that the same objection equally and similarly applies to the witnesses Nos. 1 to 15, who depose against Omed Alee in favor of Torab, and Kurm Alee; so that we must revert for our conclusion to that evidence which may appear to us the best corroborated by independent facts.

The Counsel for prisoner specially urges against Ashgur's evidence, that he said at the thaunnah that he *heard* of the incidents he related; and to the Magistrate and Sessions Judge that he *saw* them; further that this could not be an error, intentional or otherwise of the Police; for the witness does not deny the fact; but merely says he was more or less unbalanced in his mind, owing to his brother's murder. The facts, however, generally deposed to by this witness before the darogah are not contradicted by those to which he deposes before the Magistrate and Sessions Judge; and are supported by the depositions of the other witnesses, and by the circumstances of the case.

The objection of the Counsel to the evidence of Omed Alee, as to the contradiction in his statement, about his own precise position, is futile; for it is clear from other evidence that he was on the spot, and behind the deceased, when the shot which killed deceased was fired, but we do not rely on his evidence, except as to facts otherwise proved.

The further objection, that each of the witnesses does not in each Court mention exactly each and all of the other witnesses as present, or where present, is weak; for the omissions excepted to, are not of a nature to affect the general character of the evidence.

The Counsel for the prisoners urges that his clients were in confinement when the Magistrate took the evidence of the witnesses examined by him on the spot on the 26th April; and

that these witnesses were the partizans of Omed Alec, and deposed under the influence of the darogah. There is no evidence to support this plea; nor any thing to shew that the Magistrate on the spot did not use proper endeavours to procure the best evidence available.

The prisoner's Counsel also strongly urges that neither the witnesses Nos. 1 to 15, nor the deceased, at any time could shew who fired the fatal shot; and that no Court can accept the evidence of interested parties, such as the witnesses whose evidence was taken by the Sessions Judge, on the remand, to the effect that prisoner No. 20 fired that shot, in contradiction to a dying man's consistent statements that he could not say who did it.

We admit this objection, so far, that we do not view the proof that Kurm Alli fired the fatal shot as clear, because the dying man is shewn to have stated that he did not know prisoner No. 20, to have done it, nor who did it.

The defence of the prisoners has now to be considered, in connection with the evidence and circumstances of the case above recorded.

Prisoner No. 19, Torab Alec before the Magistrate denied the charge, and stated that Omed Alec's party attacked and plundered his and prisoner No. 20's premises; and that he, prisoner No. 19, then left the house, and informed the Police jemadar at Komerara.

Before the Sessions Judge he pleaded that he went to Gooroo Doss' house, and stated the same facts to him. This was *not* mentioned to the Magistrate: and if it was true, it would probably have been urged to the Magistrate. Nor is Gooroo Doss's or Surftoollah's evidence on this point of that nature that it should outweigh the direct evidence against this prisoner.

Prisoner No. 20, Kurm Alec urges that he fled to a garden when his premises were attacked, and he calls witnesses who depose to meeting him there, and that *after that* a gun was fired. Their evidence is open to the objections noted against it by the Sessions Judge: and does not in our mind outweigh the full and consistent evidence against this prisoner.

Prisoners Nos. 21 and 22, repudiated at the Sessions the witnesses they had called. No. 22, urges that Reziollah did not mention him. But the other witnesses distinctly did so. These prisoners substantiate no defence.

As to prisoner No. 23, the Sessions Judge in his letter of 10th January, para. 6, proposes to acquit this prisoner: "as it is more than doubtful" if he be the prisoner deposed to.

On this, we would observe that the witnesses Nos. 1 to 15, spoke of him as the man wounded by Omed Alec's party, and specified his sitting with his hand to his head, and mentioning the nature of his wound. It is in evidence that a Kistochun-

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der Goocho was a gomashta of Torab Alee. The witnesses Asghur, Omed Alee and Moymooddeen recognize the prisoner No. 23, as the gomashta, and as implicated in this case; but Ameerooddeen, and Reziollah say, *in the Sessions Court*, that the prisoner No. 23 is not the Kisto Goocho they referred to. Still we observe that they saw this prisoner in the Magistrate's Court and thus had the opportunities of identifying him there, and yet did not make any such statement then, as they did at the Sessions.

As, however, we have considered the testimony of witnesses Nos. 1 to 15, doubtful throughout, we would not allow it to weigh against this prisoner. It thus remains to consider whether the contradiction in the Sessions of witnesses Ameerooddeen and Reziollah as to this prisoner, warrant his release. As the doubt must arise from the contradiction, we consider it right to give him the benefit of it, and direct his release.

We convict the prisoners Nos. 19, 20, 21 and 22, of riot attended with murder; and we sentence the prisoners Nos. 19 and 20, to be imprisoned with labor and irons in transportation for life beyond sea, and Nos. 21 and 22, for fourteen years' imprisonment with labor and irons, in banishment.

The Court would add that when the Magistrate makes a local investigation, the facts elicited by his personal observation, as also dates, and other main points, should be precisely and clearly stated in the Column 13 (Abstract, &c.) of the Calendar. In this case, the Court have had to search for detached vernacular proceedings, and so to trace what the Magistrate did in his local investigation. The witnesses examined for the defence by the Magistrate have not been noted in the last column of the Calendar, as examined.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*

RAMNARAIN DOSS (No. 25,) JUGGERNATH SHAH  
(No. 26,) AND RAMGUNGAH DOSS (No. 27.)

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Prisoners ac-  
quitted, the  
evidence to the  
charge being  
insufficient.  
Remarks on  
the manner in  
which the  
stamp ven-  
dor's accounts  
were kept.

CRIME CHARGED.—1st count, No. 25, forgery in having forged the deed of sale marked A ; 2nd count, forgery in having, for his own advantage, and with a view to defraud his brother Rajnarain Shah (decreedar) notwithstanding the stamped paper on which the deed of sale was written, was sold on the 11th November, 1853, corresponding with 27th Kartick, 1260, in having dated the sale of land as in that document, the 16th Kartick, 1257, the latter date being prior to the sale of that paper, and having altered the date of sale of that paper from the 11th November, 1853, 27th Kartick, 1260, to the 11th November, 1849, 27th Kartick, 1256 ; 3rd count, uttering the above forged document in the Court of the Principal Sudder Ameen of Sylhet knowing it to be forged ; 4th count, *fraud* in having for his own advantage, and with a view to defraud his brother Rajnarain, put down a date in the document (marked A) that is prior to that of the sale of the stamped paper, on which the said document is written ; 5th count, Nos. 26 and 27, being accomplices in the charges of 1st and 2nd counts by wilfully subscribing their names as witnesses to the abovementioned deed knowing it to be a forgery.

CRIME ESTABLISHED.—No. 25, forgery and uttering a forged document ; Nos. 26 and 27, being accomplices in forgery.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating Sessions Judge of Sylhet, on the 16th December, 1856.

*Remarks by the officiating Sessions Judge.*—This case was investigated by the Principal Sudder Ameen owing to a report received from the record keeper of his Court.

Rajnarain Doss (witness No. 6,) obtained a decree, dated 21st December, 1852, against his brother Ramnarain Doss (prisoner No. 25,) amounting to rupces 7,885-15, and which was awarded by the Principal Sudder Ameen of the district. Rajnarain Doss executed the decree on the 10th May, 1854, in order to attach some of the prisoners' landed property, the case was, however, struck off the file, and the decreeholder revived the case on the 25th of January, 1856, and having

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attached the prisoner's property advertised it for public sale. Luckee Dossee (witness No. 7,) the wife of the prisoner Ramnarain Doss, appeared as a claimant and urged that the prisoner had on the 6th Magh, 1855, B. S. sold to her all the immoveable property in his possession, but as the said *keballah* (deed of sale) was missing, he, the prisoner, on the 16th Kartick, 1257, B. S., executed a second *keballah* and received Rs. 25 from her (witness No. 7.) Mussumat Luckee Dossee filed in the Court of the Principal Sudder Ameen a petition together with the said *keballah* on the 16th July, 1856, through her pleaders Moonshee Kantonath Doss and Moulovee Zahoorooddeen.

The muhafiz of the Principal Sudder Ameen's Court reported that in a *keballah* filed on behalf of Luckee Dossee, a claimant in the case of Rajnarain Doss *versus* Ramnarain Doss, an alteration and erasure of the date of sale of the stamp paper on which the said *keballah* was written had been made, the real date of sale of the stamp paper being 11th November, 1853, (corresponding with 27th Kartick, 1260, B. S.) and which was altered into 11th November.

On reference to the above document the Principal Sudder Ameen suspecting it to have been forged, entered into an investigation; this *keballah* was filed by Moulovee Zahoorooddeen and Moonshee Kantonath Doss, pleaders attached to this Court, and on being questioned, the latter replied, that he knew nothing about the matter, and the former said that he had received the *keballah* from Keamutoollah one of the subscribing witnesses thereto, the prisoners were apprehended and the case investigated by the Principal Sudder Ameen, who considered the *keballah* to be forged, released Keamutoollah one of the subscribing witnesses to the *keballah*, Luckee Dossee and the two pleaders who had filed the document in the Principal Sudder Ameen's court and who were defendants before him, and forwarded for trial to the Magistrate the prisoners Ramkanaye Doss, Juggernath Shah and Ramgunga Doss, witnesses to the deed of sale, charging them with forgery, &c., an extract of the remarks of the Principal Sudder Ameen in this case is noted in the margin\* for easy reference.

\* In my opinion, the 1st and 2nd charges are clearly proved against defendant No. 1, by the Collector's registry of stamps sold, vide books for the years 1849 and 1853 A. D. and the evidence of *Sunkerram Pall* and *Mooneeram Shah alias* Munram Shah, whose names are written as subscribing witnesses to the aforesaid *keballah*, (but which is denied by them) and by the testimony of Gopeenath Deb (whom Ramnarain, defendant, describes as Luckee Dossee's mooktear, but which is also denied by him,) and by the answer of

Prisoner No. 25 before the Magistrate denies all knowledge of the matter, but admits that he sold certain lands in 1256 and 1257, B. S. to his wife Luckee Dossee. Prisoner No. 26, states

Luckee Dossee who likewise denies execution of the *keballah* to her.

Against defendants Nos. 2 and 3. The charge against them is fully established, inasmuch that they acknowledge having witnessed the execution of a deed on the 16th Kartick, 1257, B. S. (31st October, 1850,) when the stamp paper in which it is engrossed, have been clearly proved (by the registry books referred to) to have been sold by the vendor on the 27th Kartick, 1260, B. S. (corresponding with the 11th Nov. 1853.)

that he became a subscribing witness to a deed of sale executed by Ramnarain Doss to his wife Luckee Dossee, the prisoner identified his signature in the *keballah* filed in the case, he further states that at the request of Gopeenath Deb he witnessed the *vakalutnamah* filing the document, i. e. the aforesaid *keballah*.

Prisoner No 27, states that he became a subscribing witness to the deed of sale, and identified his signature attached thereto.

Witnesses Nos. 1 to 5 in this Court attest the replies of the prisoners in the Magistrate's Court.

Witnesses Nos. 12, 13 and 14, attest the replies of the prisoners Nos. 25 and 27, given before the Principal Sudder Ameen on the 1st of August.

Witnesses Nos. 15 and 16, attest the reply of the prisoner No. 26, before the Principal Sudder Ameen on the 18th of August.

Witness No. 6, in this Court deposes that Ramnarain Doss forwarded a forged *keballah* to his pleader, who filed it in Court, and that the said Ramnarain Doss bore a character for dishonesty and also identified the deed as having been written by Ramnarain Doss, and witness further states that he is a shareholder in the estates mentioned in the deed of sale. Musst. Luckee Dossee (witness No. 7,) deposes that she has no claim and did not purchase any land from Ramnarain Doss (prisoner No. 25) by a deed of sale signed by him, nor did she give any *vakalutnamah* in a *daveedary* case, in fact Luckee Dossee denies all knowledge of the deed of sale and states she preferred no claim whatsoever in the suit.

Witness No. 8, deposes that he was not a witness to the *keballah* and denies all knowledge of any sale of land by Ramnarain Doss to Luckee Dossee and is not aware by whom his name was inserted in the deed of sale.

Witness No. 9, denies having signed his name to any deed of sale belonging to Ramnarain Doss and knows nothing about the transaction.

Witness No. 10, who is the stamp-vendor stationed at Lushkorpore, produces in Court his stamp registry, but cannot discover that he sold any stamp to Nazimoolah on the 11th November, 1849, and is of opinion that the date of the stamp was erased and altered into 1849 and 1256 B. S. he deposes to having sold a stamp paper to Nazimoolah on the 11th of

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November, 1853 or 26th of Kartick 1260 B. S. alterations in the dates are not in witness's handwriting, had they been, he would have attached his signature; the rest of the writing is his.

Witness No. 11, states he is neither the *mooktear* or the *gomashdah* of Musst. Luckee Dossee, Ramnarain Doss's wife; that he gave no stamp to Ramnarain Doss, and he did not cause a deed of sale to be written, in which Ramnarain Doss was the seller and Musst. Luckee Dossee the purchaser, and knows nothing of the transaction.

It appears from the evidence on record that Ramnarain Doss, the prisoner, with intent to exempt himself and his landed property from the liabilities of the decree obtained against him by his brother, Rajnarain Doss, fraudulently prepared a deed of sale of all his landed property in the name of his wife Musst. Luckee Dossee, and afterwards forged the dates, &c. on the stamp paper.

Ramnarain Doss (prisoner No. 25,) before this Court, pleads *not guilty*, he states that it was the practice of the stamp-vendor, as deposed to by him, to insert the name of one person as the purchaser of a stamp paper and sell it to another individual, so that it is probable that the stamp-vendor wrote the name of one person as purchaser and inserted as such the name of some other person in the sale of stamp's registry, that Nazim-oollah, who is said to have been the purchaser of the stamp paper deposes that he is not aware of any circumstance connected with the purchase of the stamp, that the stamp on which the deed of sale was engrossed is not the same as is inserted in the registry of the sale of stamps under the heading of the 11th of November, 1853; that the real date of sale of the stamp paper may be found in the registry books for the years previous to 1849; that the witnesses Kymutoollah and Juggernath Shah have deposed to the fact that he, the prisoner, did not send the *keballah* to be filed in court, nor did he prefer any claim in the case; that Luckee Dossee, who was then residing in her father's house, forwarded a *vakalutnamah* directing her pleader to prefer a claim in the case; that the pleaders, who filed the *keballah* in court, depose that they found no erasures, &c. in the *keballah* when filed; that had there been any erasures they could not have escaped the notice of the pleaders who filed the document; that Luckee Dossee deposes that she does not reside with him (the prisoner) and that she is on bad terms with him; that no reason appears for the prisoner preferring any claim in the *decreejaree* case through the said Luckee Dossee; that Luckee Dossee being dependent on Rajnarain Doss, the decreeholder, deposed in consequence against him (the prisoner) the prisoner further states that Rajnarain (the decreeholder) became security for Luckee Dossee in the case, and there is every reason

to believe that she would depose against him, (the prisoner;) that Luckee Dossee having been a defendant in the case, her statements as a witness before this Court should not be taken into consideration to his, the prisoner's detriment, the prisoner also pleads ignorance of all the circumstances connected with the alteration, &c. effected in the dates of the stamp paper; that he did not commit the forgery, nor did he utter the forged document; that the *keballah* was filed by the pleaders attached to the Court, and for this he, the prisoner, cannot be condemned, and for further particulars the prisoner refers to his petition.

Juggernath Shah, prisoner No. 26, pleads *not guilty* and states that he did not subscribe as a witness to the deed of sale knowing that the said deed was forged, he cites no witnesses in his defence.

Ramgunga Doss (prisoner No. 27,) denies all knowledge of the forgery, but cites no witnesses in his defence.

The assessors in a lengthy verdict giving a summary of the case, and which is filed with the record, convict Ramnarain Doss, prisoner No. 25, of forgery and of uttering a forged document, and also convict prisoners Nos. 26 and 27, of being accessaries in the above crime, &c., and in which verdict I concur and sentence the prisoners as below.

*Sentence passed by the lower court.*—No. 25, to five years' imprisonment with labor in irons, Nos. 26 and 27, to be imprisoned without irons for three years from this date and to pay a fine of (50) rupees on or before the 25th instant, or in default of payment to labor until the fine be paid or the term of sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners have appealed. Baboo Unnodah Pershad, Counsel for the prisoner Ramnarain, urges two pleas; 1st of law, 2nd of fact. With regard to the first plea he asserts, *first* that the Principal Sudder Ameen's proceedings were illegal, because his client was not at the time before the Court in the capacity of a party to the suit; and *secondly*, because no accusation was brought against his client. He urges that Act I. of 1848 is only an extension of Section 14, Regulation XVII. 1817, which law lays down who are the parties liable to be committed for forgery or perjury by the Civil Courts, and that they must be parties before the Courts, as plaintiffs, defendants, or witnesses; but that Ramnarain, the appellant, in the present case, was no party to the suit then before the Court. The Counsel then stated that Rajnarain had obtained a decree against the appellant Ramnarain, and had, in execution of that decree, attached and advertised for sale the appellant's landed property; that Luckee Dossee, wife of the appellant, to whom he had sold the property, filed a petition of claim, accompanied with the bill of sale, upon which

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the present criminal proceedings are based, and, on the report of the record-keeper of the Principal Sudder Ameen's Court that the date of the purchase of the stamp, endorsed by the vendor had been altered, proceedings were taken against the appellant; but as he was no party to that claim-case, and consequently not a party before the Court, the Principal Sudder Ameen, though he might have sent for and examined him as a witness, could not at once put him on his defence for forgery. The Counsel further adds, that as no accusation was brought against his client, he was not within the terms "parties accused." Moreover that as the bill of sale was filed by Luckee Dossee through her vakeels, Zuhleerooddeen and Kantonath, who were duly appointed by her for that purpose, his client was not concerned. And that as the appellant had nothing to do with that case, and no charge was brought against him, the Principal Sudder Ameen's proceedings against him were altogether illegal; that had the Magistrate, after the case was referred to him for investigation, sent for the appellant as implicated, no objection could have been made; but the Principal Sudder Ameen had no authority to summon a party not accused, and not before the Court, and make him over for trial to the Magistrate. The Counsel also urged that the "case pending" was closed, when the decree in the original suit was passed.

With regard to these objections we observe that as Ramnarin was a party to the original suit in which Rajnarin obtained a decree, and the claim-case in which the bill of sale was filed arose out of the execution of that decree, Ramnarin must be considered a party before the Court, till the decree be completely executed; and as such, liable to be proceeded against in the manner prescribed by Section 14, Regulation XVII. 1817, and Act I. of 1848. We therefore overrule this plea.

From the Principal Sudder Ameen's English proceeding of 25th August the Court cannot discover the reason why the appellant was charged with the forgery, i. e., the alleged alteration in the date of the stamp vendor's endorsement. Possibly as he had executed the deed of sale, and the alteration was for his benefit, the Principal Sudder Ameen considered it probable that he had made the alteration.

With regard to the *facts* of the case, it is admitted by Ramnarin, prisoner No. 25, that he wrote and executed the bill of sale before the Court, and prisoners Nos. 26 and 27 acknowledge themselves to be attesting witnesses, and point out their respective signatures. The prisoners deny having made any alteration in the stamp vendor's endorsement, and state that when the bill of sale was executed, there were no erasures of any kind. The proof of the alteration rests upon the stamp-vendor's monthly statement of sale of stamps for November, 1853, filed in the Collector's office, but unauthenticated by the Collector, or any

responsible officer. This statement shews that on 11th November 1853, corresponding to the 27th Kartic 1260 B. S. four pieces of stamp paper, of which two were of one rupee value, were sold to one Nazimoolah. The year of sale has, it is alleged, been altered from 1253, corresponding to 1260, to 1849, corresponding to 1256. The proof of this is alleged to be, that by the monthly statement of November, 1849, no sales were shewn as made to Nazimoolah on the 11th of that month. Admitting this to be the case, it remains to be seen whether the charges, of which the prisoners are convicted, have been proved. Now Ramnarain is convicted of forgery, and uttering a forged document. There is no proof of the prisoner having himself made the alleged alteration on the back of the deed of sale; and the mere uttering a forged document is in itself no crime. There must be a *guilty knowledge*, and a *fraudulent intent* to make the party issuing a forged document liable to punishment; and in this case, as far as the Court can judge from the finding of the Sessions Judge, it is not proved that the prisoner, even supposing he did file the deed of sale, did so, knowing of the forgery, and with a fraudulent intent. But it is not proved that the prisoner did issue the document, or in any way procure it to be issued. It was filed by certain *vakeels* appointed by Luckee Dossee, wife of the prisoner Ramnarain, and from whom she is said to be separated. It is stated to have been brought to the Court by their Mookhtar Gopeenath Deb, accompanied by two witnesses to attest the *vakalutnamah*, viz. Keamutoollah and Juggunnath Shah, prisoner No. 26; and whatever suspicion might be entertained, with reference to the parties being husband and wife, that Luckee Dossee's name was only made use of, while the real party filing the deed was Ramnarain, yet there is no proof of this latter fact.

Could it have been satisfactorily proved that the stamp paper on which the deed of sale is engrossed was really purchased in 1853, there would of course be strong *prima facie* presumption against Ramnarain that he was the party who altered the stamp vendor's endorsement; but the proof of this rests on the not very decided testimony of the stamp-vendor, and on the monthly statement of stamps sold, filed by him in the Collector's Office. The manner in which entries were made in that statement shews how utterly worthless it is as evidence of the sale of any piece of stamp paper; for the stamp-vendor admits that till within the last six months it had been the custom to endorse the name of one person, on several sheets, and to enter that name into his list, while the paper bearing such name might be sold to several *other* individuals; thus it is not improbable that paper might be sold to an individual, and his name endorsed thereon, and some other name entered in the vendor's statement; and though the name of Nazimoolah, the

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endorsee, be entered in the vendor's statement of November, 1853, and not in that of 1849, yet the inaccuracy (above noticed) with which entries were made, renders that statement, in our opinion, unworthy of credit. The endorsement, we observe, bears no very distinct marks of erasure or obliteration. The figures are somewhat thicker than the writing immediately subsequent to them; yet it is doubtful if the same thickness is not traceable in other parts of the endorsement. Under these circumstances, we do not think the charges upon which the prisoners have been convicted are satisfactorily proven, and we direct that the prisoners be released.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

SOOBUL BAOOREE.

Chota  
Nagpore.

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Case of  
SOOBUL  
BAOOREE.

CRIME CHARGED.—Wilful murder of Kandree, the concubine of the prisoner.

Committing Officer—Captain G. N. Oakes, Principal Assistant Commissioner of Manbhoom.

Tried before Mr. W. H. Oakes, Deputy Commissioner of Chota-Nagpore, on the 27th February, 1857.

The prisoner sentenced to imprisonment for life in transportation, upon his confessions; and there being no evidence of cause of the deed, but those confessions.

*Remarks by the Deputy Commissioner.*—The first intimation of the murder was received from the prisoner himself, who, on the 1st September, 1856, came to Bydonath Sirdar, witness No. 9, and told him that he had killed his wife, Musst. Kandree, and hung her up to a tree, prisoner was accordingly arrested, and notice given at the thannah. On the arrival of the police, the prisoner confessed that his wife had refused to clean his paddy field, and had thrown down her ornaments and gone off to the jungle and seated herself under a tree and that he had gone after her and beaten her on the neck and head with a *lattee*, till she was dead, and that he had then suspended her body by a piece of string to a tree.

Before the Sub-Assistant and Principal Assistant Commissioner, the prisoner confessed, that he had beaten the woman to death, with a *lattee*, but that the cause of doing so was, that he had seen her in the jungle having criminal intercourse with a man, who, had absconded when the prisoner came up to the spot.

The prisoner in the Sessions Court pleads *not guilty*, and says that his concubine having committed suicide, he did not wish to survive her and therefore made the confessions as above-mentioned.

There is no eye-witness to the crime, but that the deceased was murdered by the prisoner, is, I think, satisfactorily established, by the prisoner's confessions corroborated as these are by the circumstances of the case. Immediately after the occurrence, the prisoner went to Bydonath, witness No. 9, and told him what he had done, and on this, the witness proceeding with the villagers and the prisoner to the spot, the corpse of the deceased was found suspended to a tree. It is quite clear from the evidence\* that the deceased had not committed suicide, as the rope was loose round her neck and her feet were also

- \* No. 1, Anund Mahto.
- „ 2, Raghub Mahto.
- „ 3, Mutteeram Mahto.
- „ 4, Kany Mahto.
- „ 9, Bydonath Sirdar.

touching the ground.

- † No. 1, Anund Mahto.
- „ 2, Raghub Mahto.
- „ 3, Mutteeram Mahto.

sufficient to account for her death. That the death of the deceased was caused by the assault made on her by the prisoner, I see no reason to doubt, for it is quite possible for the prisoner to have struck with sufficient force to kill her without leaving any mark of external injury on her body, specially after the decomposition of the corpse had commenced.

The motive for the murder as given by the prisoner in his *mofussil* and *foujdary* voluntary confessions, differs considerably, but I believe that the confession made by him before the police, to be the true statement of the occurrence as it was made immediately after the murder had taken place.

The jury‡ find the prisoner guilty.

‡ Koylasmath Chatterjee, Mooktar.  
Nufferehunder Sein, Mooktar.

In this verdict, I concur, and considering the crime of the prisoner as a deliberate murder, as he distinctly states that he continued to beat his unfortunate concubine till she was dead, and seeing no grounds for a mitigated punishment being awarded, I beg to recommend that a capital sentence may be passed on him.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) There is no doubt from the prisoner's confessions and the evidence of the witnesses, residents near the spot, that the prisoner caused the death of the deceased by violence. His plea that the deceased committed suicide is contradicted by the facts shewn in the *sooruthal* taken on

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the following day ; and by the evidence of the witnesses ;—viz. that the grass rope was loose about the neck ; that it was of too slight a nature to answer the purpose of suicide, and that the feet were resting on the ground, the branch being four cubits high, and one cubit of rope being intervening between the branch and the deceased's neck. The body is stated to have been too decomposed, even on the day following, to admit of medical examination, though it was sent in eventually ; but it is in the evidence of Bydonath that a mark was on the neck, like that of a *lattee*. The prisoner's plea to the Magistrate that he killed the deceased, because he found her in criminal connection with another man, whom he did not know, does not seem to have been mentioned by him to any of the villagers, and the latter all depose to their not knowing of any misconduct with other people on her part. Rejecting that portion of the prisoner's defence, which ascribes the death of deceased to suicide, as being contradicted by proven facts, and giving the prisoner the benefit of that doubt, which may arise from his statement that he killed deceased because he found her in the jungle in criminal intercourse with another man, as there is no evidence directly to disprove or contradict it, and nothing but his own confession to shew directly that the prisoner did the deed, or to prove the cause, we sentence him to be imprisoned for life, with labor and irons in transportation beyond seas.

We observe that the police report of the *sooruthal* held on the 2nd shews that the prisoner had then confessed to the *murder*, yet it is reported to the Magistrate that day as a suicide, on the statement of Doorgaram, who, however, was a witness to that *sooruthal* ; and says that he reported it as a murder ; nor does it appear why Bydonath's deposition was not taken till the 5th. The above remarks are to be communicated to the Superintendent of Police.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND KALLACHAND

*versus*

RAJCHUNDER SHIKAREE.

24-Pergun-  
nahs.

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Case of  
RAJCHUNDER  
SHIKAREE.

**CRIME CHARGED.**—Burglary of property (value 12 annas) in the house of Kallachand Koley, attended with the wilful murder of Teeluk Chowkeedar when endeavouring to apprehend the burglars.

**Committing Officer.**—The Hon'ble A. Eden, officiating Joint-Magistrate of Baraset.

Tried before Mr. T. C. Loch, additional Sessions Judge of 24-Pergunnahs, on the 24th February, 1857.

**Remarks by the additional Sessions Judge.**—The prosecutor was asleep, when being touched by some one, he awoke and found that his house had been entered by a thief through a hole cut in the wall, he immediately opened the door of his house and gave the alarm. The thief on this ran off, but was seized by the deceased, Teeluk Chowkeedar, who, while doing so, received a blow on the abdomen from a "*seend-katee*," which, owing to his cloth, did not inflict an incised wound, but was of such force that the injury caused peritonitis, from which he died. The prisoner was, however, secured with a *seend-katee* and a small quantity of stolen property in his possession.

Prisoner con-  
victed. Severe  
sentence with  
reference to  
the prevalence  
and increase of  
the crime.

The prisoner confessed before the police both to the burglary and striking the blow, but this latter he denied before the Magistrate, although acknowledging the burglary. As the only evidence to the prisoner striking the blow is derived from what the deceased, Teeluk Chowkeedar, stated to the Mohurrir of the thannah, there being no eye-witnesses to the fact, I agree with the *fatwa* of the law officer, and find the prisoner guilty of being concerned in a burglary, in which Teeluk Chowkeedar was killed, and recommend that he should be imprisoned for life with labor and irons.

**Remarks by the Nizamut Adawlut.**—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner confessed his guilt as to the burglary to the police and to the Joint-Magistrate. He denied to the police and Joint-Magistrate his having inflicted any blow on the deceased. (The Sessions Judge is in error in stating that he confessed this blow to the Police.) The prisoner was seized by the deceased, and the deceased stated to the witness Goluck and others, immediately after his seizure of the prisoner, that the latter had struck him about the abdomen with his *seend-katee*. The *seend-katee* and stolen property

|       |                                    |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------|------------------------------------|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1857. | Case of<br>RAJCHUNDER<br>SHIKAREE. | April 27. | were found with the prisoner on the spot. The Civil Surgeon of Hooghly, Dr. Baillie, deposes that the deceased died of peritonitis, and that that might have followed a blow from a <i>scend-katee</i> . There does not seem to have been any premeditated intention to kill; but it appears that the blow, which proved fatal, was struck in the endeavour of prisoner to free himself from the grasp of deceased. Under all these circumstances, |
| 1853  | Burglaries,.....                   | 184       | and looking to the frequency and increase of burglary in the Baraset district which the criminal statements of this Court shew,*                                                                                                                                                                                                                                                                                                                   |
|       | Attempts, .....                    | 34        | we sentence the prisoner to be imprisoned in transportation for life.                                                                                                                                                                                                                                                                                                                                                                              |
| 1854  | Burglaries,.....                   | 200       |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|       | Attempts, .....                    | 25        |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 1855  | Burglaries,.....                   | 236       |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|       | Attempts, .....                    | 54        |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 1856  | Burglaries,.....                   | 311       |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|       | Attempts, .....                    | 57        |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

*Trial No. 3.*

GOVERNMENT AND BULLORAM SERMAH

*versus*KONANAUTH (No. 1.) SHEIKH JUKEY (No. 2.) AND  
KOSEER MAHOMED (No. 3.)*Trial No. 4.*

GOVERNMENT AND KISSECHURN DOSS

*versus*Sylhet. KONANAUTH (No. 5.) ROSHIKRAM BAROIE (No. 6.)  
1857. AND JOMIL MAHOMED (No. 7.)*Trial No. 5.*

GOVERNMENT AND HURNARAIN SERMAH

*versus*

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Case of  
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KONANAUTH (No. 8.) AND SHEIKH JUKEY (No. 9.)

Two prisoners convicted, and two released. Remarks on defects in the indictment, and commitment.

CRIME CHARGED.—Trial No. 3.—Burglary in the house of the prosecutor and theft of property to the value of Co.'s Rs. 4-12.—Trial No. 4, burglary in the house of the prosecutor and theft of property to the value of Rs. 10-4.—Trial No. 5, attempt at burglary and theft in the house of the prosecutor.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Sylhet.

Tried before Mr. M. Shawe, officiating Sessions Judge of Sylhet, on the 14th November, 1856.

*Remarks by the officiating Sessions Judge.—Trial No. 3.*—This and the following two cases are connected with each other. The particulars of this case are as follows: On the 30th September last, one Sheikh Edoo chowkeedar, deposed before the darogah of thannah Parcool, that on the previous night, i. e. the 29th, the house of one Bullo Thakoor was burglariously entered, and property to the value of Rs. 4-12 stolen therefrom, viz. two brass *lotas* two *batees* and four pieces of cloth, no one, however, was at first suspected. On the 2nd of October, Tuckee chowkeedar apprehended Konanauth, (prisoner No. 1.) Roshick Baroie, Jonil Mahomed, and Koseer Mahomed (No. 3,) and brought them before the darogah of thannah Parcool, with some property which they had stolen from the house of the prosecutor in this case, and from the house of one Kistochurn Mohunt, plaintiff in case No. 2, the chowkeedar stated, that he caught the prisoners while making away with the stolen property.

The prisoners confessed the crime with which they stand charged, Konanauth (No. 1,) Sheikh Jukey (No. 2.) and Koseer Mahomed (No. 3,) before the police acknowledged their guilt in this and the following two cases, and the confessions of the prisoners, both before the police and the Magistrate, are proved by the subscribing witnesses thereto to have been voluntarily made.

The evidence in this case has clearly established the prisoner's guilt and the witnesses to the recovery of the property have also proved the fact of the property having been found in the prisoner's possession, the property numbered 1 and 2 was by the instructions of prisoner No. 1, produced by his brother from a neighbouring *jungle*, and has been proved to have belonged to Bulloram Sermah.

The defence set up by the prisoners has broke down.

The assessor convict the prisoners of burglary and I concur in their verdict.

*Trial No. 4.*—The witnesses to the recovery of the property in this case are the same as in case No. 3, of the Magistrate's calendar, the particulars of the case are as follows: On the 1st of October last, Harree Doss Boistub, a defendant of the prosecutor, appeared before the darogah of thannah Parcool and deposed to the effect, that on the night of the 30th September last, a burglary was committed in the prosecutor's house, and property stolen therefrom. Tuckee chowkeedar apprehended the prisoners with the stolen property in their possession, and the prosecutor lodged his complaint at the thannah and claimed the

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property numbered 1 to 10 as belonging to him, the confessions of the prisoners both before the police and the Magistrate, substantiate the crime with which they are charged, and the fact of the prisoners having been apprehended at the time they were making away with the stolen property has been satisfactorily proved, the property Nos. 1, 3 to 10, found with the prisoners, and No. 2, with the prisoner Konanauth has been proved to have belonged to the prosecutor, it is also proved that prisoners Nos. 5, 6 and 7, are bad characters; prisoner, Nos. 4, 5 and 6, cited no witnesses in their defence, and No. 7, failed in his defence. The assessors returned a verdict of guilty, in which I concur.

*Trial No. 5.*—This occurrence and also that in case No. 3, of the Magistrate's calendar took place on the same night; and the prisoners in this are the same as those in the other case. The prosecutor states, that on the night of the 29th September last, an attempt to commit burglary and theft was made in his house, but no property was stolen, prisoner No. 8, in this case and No. 9, in case No. 3, of the Magistrate's calendar, admit their guilt; and the witnesses in the case have deposed to having seen a *seende* or entrance passage in the prosecutor's house. The assessors have returned a verdict of guilty in which I concur.

The report of the record-keeper of the Magistrate's Court proves, that the prisoner Roshik Baroie had twice been convicted of burglary, and prisoner Koseer Mahomed of being a bad character, and the latter was sentenced to one year's imprisonment and also to five years' imprisonment in a case of burglary, that the prisoner Jomil Mahomed was apprehended as a bad character, and convicted; and also in a case of cattle-stealing.

The *seend katee* found on the prisoner Konanauth is proved to have belonged to Roshik Baroie. The prisoners were found guilty by the assessors, in which verdict I concur.

I find the prisoner Konanauth guilty of burglary and theft in trials Nos. 3 and 4 and of an attempt at burglary and theft in trial No. 5, the prisoner Sheikh Jukey, of burglary and theft in trial No. 3, and an attempt at burglary in trial No. 5, and Sheikh Koseer Mahomed of burglary and theft in trials Nos. 3, and 4, and Roshikram Baroie and Jomil Mahomed of burglary and theft in trial No. 4, and pass a consolidated sentence upon Konanauth, Sheikh Jukey and Koseer Mahomed, as specified in column 12. I also sentence Roshikram Baroie, and Jomil Mahomed, in trial No. 4, as specified in column 12, the fact of being the owner of a *seend katee* shews, that the prisoner Roshikram Baroie is a professional burglar.

*Sentence passed by the lower court.*—Trials Nos. 3, 4 and 5, Konanauth, a consolidated sentence of seven (7) years' im-  
prisonment.

sonment with labor in irons. Sheikh Jukey in trials Nos. 3 and 5, a consolidated sentence of five (5) years' imprisonment with labor in irons. Koseer Mahomed in trials Nos. 3 and 4, a consolidated sentence of four (4) years' imprisonment with labor in irons. Roshikram Baroie in trial No. 4, imprisonment of (7) seven years with labor in irons and Jomil Mahomed in trial No. 4, imprisonment of (4) four years with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) A burglary had been committed in the house of Bulloram Thakoor in *mokam* Barkote, and the talookdar directed the chowkeedar Mahomed Tucky to be on the alert, and to endeavour to apprehend the thieves. Two days after, he observed four men proceeding along the road, one of them (Konanauth) carrying a bundle. Something, but what it was does not appear in evidence, roused his suspicions, and with the assistance of Heera and Rawaye he stopped the parties, and took them to the talookdar's house where their bundles were examined. A *seend-katee* and some clothes were found on the prisoner, Roshik Baroie. A *tuslah*, identified by the prosecutor, Kishenchurn Doss Mohunt, was found with Koseer Mahomed, prisoner No. 6, and the bundle, carried by Konanauth contained clothes, identified as his by the same prosecutor. The prisoner Konanauth, also directed his brother, Anienauth, to produce four *lotahs* from the jungle near his house, of which, he said, two were the property of Bullo Thakoor, and two of Kishenchurn Doss, and stolen when the burglaries were committed in their houses. This property was recognised by the respective prosecutors as belonging to them. The prisoner Konanauth, confessed to the police and to the Magistrate to having committed the above two burglaries, and to having attempted a third in the house of Hurnaryn Surma, and the implicated the other prisoners.

The other prisoners deny the charge.

The prisoners, appellants, have been convicted of burglary and theft, (Konanauth in two cases;) and of an attempt to commit burglary. Koseer Mahomed has also been convicted of burglary and theft in two cases. Jomil and Roshikram Baroie of burglary and theft in one case each, and, as stated by the Sessions Judge on *full legal proof*.

The grounds of appeal are not clearly intelligible. The prisoners state that Konanauth had offended his talookdar Abdool Azum, by seducing Nenaye Dasse; that he had been seized by orders of the talookdar, and compelled to sign a bond for rupees 25; that he was about to complain against the talookdar, when he had him seized with other people on a charge of burglary and theft, and made over to the Police, and got property belonging to various parties, which the prisoner was charged with having stolen. The other prisoners, though living in

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Pergunnah Lunglah, at a distance of one-half day's journey from the place, where the robbery is alleged to have been committed, corroborate Konanauth's story, though what they had to do with it, does not clearly appear; and they state that they were seized on the road by orders of the talookdar, and the amount of Konanauth's bond demanded from them, and on their refusing to pay, this talookdar got property from one person and another, and sent them to the thannah on a charge of burglary and theft. They also refer to petitions presented by them to the Magistrate and to the Sessions Judge, alleging that no notice was taken by either authority of those papers.

The Sessions Judge, in his remarks on these trials, Nos. 3, 4, and 5 of statement No. 6 of October 1856, states that the prisoners confessed before the police and before the Magistrate. But of the *four* appellants, *one*, Konanauth, alone did so. Roshikram Baroie makes an admission before the Police, that he saw Konanauth bring the *lotas* and give them to Anienauth, but he denies the charge before the Magistrate. Koseer Mahomed and Jomil distinctly deny the charges, both before the police and Magistrate. The Sessions Judge has convicted these prisoners of burglary and theft "*on full legal proof*," but except in the case of the prisoner, Konanauth, who has confessed, there is nothing but presumption against the others. That presumption is very strong against Roshik Baroie, because a *seend-katee* was found upon his person. As regards the other two prisoners, however, the charge of burglary and theft is not proved at all. Koseer Mahomed might have been convicted of having in his possession stolen property, knowing it to be obtained by burglary and theft; but that count, through the neglect of the Magistrate, is not charged in the calendar. The Court therefore acquit the prisoners, Koseer Mahomed and Jomil; and confirm the Sessions Judge's order as to Konanauth and Roshik Baroie;—the one on full legal proof, the other on violent presumption, he, Roshik Baroie, not only having been implicated by Konanauth, but that statement is corroborated by the fact of a *seend-katee* having been found on Roshik Baroie. He has also been twice before convicted of burglary. The Sessions Judge should have returned the Calendar to the Magistrate for correction, as he is empowered to do by Circular Order No. 70, dated 14th November, 1851, when he observed that the Magistrate had omitted the count charging prisoners with having possession of stolen property, knowing it to be stolen.

The Court draw the Magistrate's attention to the very careless manner in which these commitments have been made. Not only is the important Count, noticed above, omitted from the Calendar; but in the remarks in Column 14, of calendar No. 1, the Magistrate states that he commits the case, as Jomil

(not a party under trial in that case) had been previously punished for cattle-stealing; whereas the proper grounds for commitment in the case were, that the prisoners, Konanauth and Koseer Mahomed, were implicated in two or more charges of burglary and theft, and Koseer Mahomed had been previously convicted of heinous offences. In the other calendars reference is made to calendar No. 1, for the grounds of commitment; but each calendar should contain distinctly the specific grounds on which that particular commitment is made.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

HAKIMA PAIK.

Dinagapore.

CRIME CHARGED.—Perjury in having on the 20th of May, 1856, deposed under a solemn declaration taken instead of an oath before T. E. Ravenshaw, Esq. Magistrate of zillah Dinagapore, that in the case of affray attended with the murder of Hingoo Mundul with Buxa and others the real defendants in the case Perpena Paik and others, who were totally unconnected with the case, were also engaged in the affray and recognized them accordingly: such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. T. E. Ravenshaw, Magistrate of Dinagapore.

Tried before Mr. J. Grant, Sessions Judge of Dinagapore, on the 18th November, 1856.

*Remarks by the Sessions Judge.*—The prisoner was a witness in a case of affray attended with murder, and pointed out sundry persons totally unconnected with the affray as having been engaged in it. He pleads having done so by mistake, as the prisoners of the affray case and of another case were mixed up together, and their cloths exchanged and that he had previously named the men he had actually recognized. The *futwa* of the law officer convicted the prisoner in which I concurred.

*Sentence passed by the lower Court.*—Imprisonment with labor and irons for three (3) years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Referring to the Precedent volume 2,

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HAKIMA  
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Prisoner re-  
leased; the  
act of the pre-  
siding officer,  
not of the  
witness hav-  
ing led to the  
false state-  
ment charged,  
Precedent  
cited.

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1857.                      | page 321, case of Ajaib and another, we consider that this conviction cannot stand. The principle generally, and that of the particular precedent, is that the charge of wilful and premeditated intent of the witness to deceive the Court into believing certain parties to be implicated in a crime, cannot be satisfactorily established, when the act, which causes the identification of such parties by the witness is not so much the act of the witness, as that of the officer presiding in the Court. We observe that the witness was desired by the Magistrate to identify certain persons <i>out of others</i> , while <i>all</i> seem by the Magistrate's record to be termed " <i>hazir ashams</i> ," i. e. present prisoners: although at the time <i>all</i> were <i>not</i> prisoners. A witness should not be considered guilty of perjury if he is wrong in his identification under such circumstances as the above. |
| April 29.                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Case of<br>HAKIMA<br>PAIK. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

We order that the prisoner be released.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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GOVERNMENT AND LUKMEEKANT MITTER AND  
ANOTHER

*versus*

Cuttack. BUNNYE MULLICK (No. 1.) GOBIND MULLICK  
(No. 2.) AND SOODAM MULLICK (No. 3.)

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1857. CRIME CHARGED.—Knowingly having in their possession certain property acquired by a theft which occurred on the 8th February, 1856, 28th Maugh, 1263, U. Friday, and in which property to the value of Co.'s Rs. 343-3 were stolen.

April 30. CRIME ESTABLISHED.—Knowingly having in their possession certain property acquired by a theft in which property to the value of Co.'s Rs. 343-3 were stolen.

Case of  
BUNNYE  
MULLICK and  
two others. Committing Officer.—Mr. V. H. Schaleh, Officiating Magistrate of Balasore.

Appeal re-  
jected. Re-  
marks on sen-  
tence and the  
preparation of  
the record in  
the case. Tried before Mr. J. Ward, Sessions Judge of Cuttack, on the 21st November, 1856.

*Remarks by the Sessions Judge.*—The plaintiffs slept at the Utturissur bazar, and told their servants to shut the door and window; but this was not done; on hearing a noise they followed the thieves who dropped a *pittarah* full of brass plates, the rest of their property was carried off. Among the recovered articles are some of gold and brass, which are proved to have been melted by the order of defendant No. 1, these were found with defendants Nos. 1 and 2: the three prisoners are relations, and were seen on the 29th May going together along a road by

witness No. 7, and on his stopping them, defendant No. 1, dropped two of the stolen things, and they all ran away: defendant No. 1, had before been seized by the rajah of Killah Nilghurry from whose custody he had just escaped after confessing the theft to the rajah.

The law officer finds the three prisoners guilty, and I sentence them to two years and one year in place of stripes, in all to three (3) years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Prisoners Nos. 1 and 2, are father and son; and prisoner No. 3, the brother of No. 1. The charge is clearly proved against prisoner No. 1, as to the property Nos. 1 to 7, especially as to articles 1 and 2, by the witness Bulleeram, who produced them as given to him to melt down by prisoner No. 1. The property is duly identified as that of prosecutor's. The defence of prisoner No. 1, is in no way substantiated, either as to the witnesses having plundered his house, or as to his *alibi*. He has been before imprisoned for theft. Article No. 9, was found on prisoner No. 2, and duly identified as the property of prosecutor. His defence is not substantiated. Prisoner No. 3, was seen, when with prisoners Nos. 1 and 2, to drop a bundle and run off. In that bundle articles Nos. 12 and 13, duly identified as prosecutor's, were found. The prisoner's denial of this, and his alleged *alibi* are not satisfactorily shewn, and cannot weigh against the direct and circumstantial evidence against him. The appeal refers to the defences given before the Magistrate and Sessions Judge, and to the delay in the apprehension and discovery of the property, and its production before the Magistrate. But we observe that the occurrence took place on the 8th February, and the apprehensions of prisoner No. 1, (who escaped once) on the 27th and 31st May, and of the others on 31st May; that articles Nos. 1 and 2 were found on the 23rd, and the rest on the 27th, 29th and 31st May; and that the delay referred to was owing to the case having gone to the Rajah of Nilgherry in the first instance. We reject the appeal.

Referring to the intent of the law providing for such cases being committed to the Sessions, and to the character of prisoner No. 1, patent on the record, we are surprised that the Sessions Judge should have passed so inadequate a sentence.

The Magistrate has not noted the witnesses who were examined and those who were not examined in his Calendar; and the abstract of information in Column 13 of the Calendar, and the Records of the grounds of decision in Statement, No. 6 of the Sessions Judge are meagre, and do not give that clear summary which they should. No comparative statement has been furnished, but it should have been.

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Case of  
BUNNYE  
MULLICK and  
two others.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Chota-  
Nagpore.

HURREE MISSEK.

1857.

CRIME CHARGED.—Wilful murder of one Soorjo Monee,  
wife of the prisoner.

April 30.

Committing Officer.—Lieut. G. N. Oakes, Principal Assistant  
Commissioner of Manbhoom.

Case of  
HURREE  
MISSEK.

Tried before Capt. W. H. Oakes, Deputy Commissiouer of  
Chota-Nagpore, on the 5th March, 1857.

Prisoners

*Remarks by the Deputy Commissioner.*—It appears that the

convicted.

prisoner Hurree Misser and his wife Soorjo Monee deceased

Remarks on

lived together on very bad terms, and that on the 22nd January,

the perjury of

1857, during the day preceding the night of the fatal occurrence,

one witness ;

there had been a quarrel between them and that the prisoner

on the Ses-

had threatened\* to kill his wife as he suspected her of having

sions Judge's

criminal intercourse with her

not referring

uncles Omarkant and Sreckant.

to the deposi-

On the night in question, the

tion of the

witnesses Musst. Dharoo Bram-

Civil Surgeon

monnee, No. 1, and Musst. Soo-

as to the na-

bancee Brammonee, No. 2, aunt

ture of the

and sister-in-law of the prisoner,

wound ; on

and who live with him, were sleeping in an adjoining apartment,

Circular Order

when the deceased ran to them followed by the prisoner who

31st August,

had an axe in his hand. The prisoner caught hold of his wife

1853, and

and took her out of the house, immediately after which the

record of

witness Soobanee heard sounds, as if the prisoner was wound-

grounds of

ing the deceased. An outcry was raised by Musst. Dharoo,

commitment,

when Dassaram witness No. 3, and Nuffer Muhto, witness No.

and on entries

11, ran towards the spot, but hearing the prisoner threatening

of witnesses in

to kill any one that might approach, they retired again to their

calendar.

own house. After this when Musst. Dharoo and Soobanee went

out, they saw Musst. Soorjo Monee, dead, just outside the prisoner's dwelling, and the prisoner sitting in his verandah close to the body of the deceased. In the morning the prisoner went and reported to Soboor chowkeedar, witness No. 13, that his wife had been killed by dacoits and that he himself had been wounded on the leg. On the arrival of the police, the prisoner confessed that he had killed his wife, because she had an improper connexion with her uncles Omarkant and Sreekant. On search being made, a bloody axe which had apparently been

- \* No. 3, Dassaram Muhto.  
4, Sadhoo Churn Ojha.  
6, Ghonoo Muhto.  
7, Kullian Muhto.

rubbed with ashes, was found\* concealed in the straw in the prisoner's granary.

Before the lower Court the prisoner said that his wife had

1857.

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Case of  
HURREE  
MISSEE.

been killed by dacoits. In the Sessions Court he pleads not guilty but does not make any defence.

That the prisoner is the murderer of the deceased is, in my opinion, fully established. It is clear that the husband and wife were perpetually quarrelling, and that just before the murder was committed, he had threatened to take her life.

There is no eye-witnesses to the fact, but it is distinctly proved† that on the night of the perpetration of the murder,

- † No. 1, Musst. Dharoo Bram-  
monee.  
2, Musst. Soobance ditto.

the deceased had run into the apartment in which Musst. Dharoo, No. 1, and Musst. Soobance, No. 2, were sleeping and that

the prisoner pursued and pulled her out. Immediately after this, the sound of blows as if the prisoner was wounding the deceased was heard by Musst. Soobance, witness No. 2, and the prisoner was afterwards seen sitting silently close by the corpse of the deceased.

The voluntary confession of the prisoner before the police‡ and the finding of the bloody

- ‡ No. 4, Sadhoochurn Ojha.  
„ 5, Babee Muhto.  
„ 6, Ghonoo Muhto.  
„ 7, Kullian Muhto.

axe concealed in the straw of the prisoner's granary, are fully proved. That the deceased died from the effects of the wounds

inflicted on her, with an axe, is manifest from the testimony of the attesting witnesses§ to the *suroothal*. The prisoner has

- § No. 3, Dassoram Muhto.  
1, Sadhoo Churn Ojha.  
5, Babee Muhto.  
6, Ghonoo Muhto.

asserted that his wife was killed by dacoits, but there is not a particle of evidence that robbers came to his house, and the wound on his leg was very slight and

had every appearance of having been self-inflicted.

The prisoner appears to have committed this murder from a suspicion of his wife's fidelity, but there does not seem to have been any cause for his suspicions, as the deceased is said to have been a well conducted person.

The jury\* find the prisoner guilty as charged.

In this verdict I fully concur and being unable to perceive any grounds of extenuation, beg to recommend that the prisoner may be sentenced capitally.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court consider the charge of wil-

\* Goyaram Roy, mookhtar and Nemiechurn Singh, ditto.

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Case of  
HURREE  
MISSER.

ful murder against prisoner to be fully proved by his confession to the police, duly attested by the subscribing witnesses, and by the evidence of the witnesses, Musst. Dharoo and Soobanee, the former of whom is aunt to the prisoner, and appears to have given most reluctant testimony against him in the Sessions Court, though her deposition to the Magistrate is clear and consistent throughout. These witnesses, though they did not see the blows struck, depose that the deceased, uttering cries of murder, rushed into their house for protection, followed by her husband, the prisoner, armed, as stated by Soobanee, with an axe; to her having been dragged out by her husband; and to their hearing sundry blows with the axe, and the cry and groan of the deceased. Their evidence is corroborated by that of the neighbours, who were roused by the cries of Musst. Dharoo, but who were prevented entering the premises by the threats of the prisoner to kill any one who approached. The Sub-assistant surgeon's deposition shews that four very severe wounds, of which two were mortal, were inflicted. The prisoner's plea in his confession to the police, that he killed his wife in consequence of finding her having an adulterous connection with her uncle, Oomakant Roy, is not attempted to be proved by him, and is disproved by the evidence of the witnesses, who state that the deceased was always well-behaved; nor is this plea again urged in his defence, either before the Assistant Commissioner, or on his trial before the Deputy Commissioner. His defence, that his wife was killed by dacoits, and he himself wounded by them, is not supported by any proof. The Court are unable to find any mitigating circumstances in this case, and therefore sentence the prisoner to be hung.

The Court observe that the witness, Musst. Dharoo No. 1, has clearly committed wilful perjury, in her contradictory statements before the Assistant Commissioner and the Deputy Commissioner; and should have been committed for trial by the Deputy Commissioner. No mention, however, of the wilful contradictions in her evidence given before the Deputy Commissioner has been made in his letter of reference to this Court. From that letter, it might be supposed that the evidence against the prisoner was consistent throughout. It is the duty of every officer before whom perjury is committed to take steps for the punishment of the offender, and the Deputy Commissioner is directed to proceed against the witness accordingly. The Court have further to observe that the nature of the wounds, on the body, as shewn in the deposition of the Sub-assistant surgeon, should have been mentioned in the letter of reference.

The Deputy Commissioner will call the attention of the Assistant Commissioner to the Circular Order of this Court, dated 31st August, 1853 No. 111, Para. 1. He is also requested to point out to that officer the necessity of more carefully stating

the grounds of commitment in the proper Column of the calendar. He has entered Musst. Dharoo and Soobanee as eye-witnesses to the murder; and the Court, on reading the remarks in Column 14 were led to suppose that the account of the murder given therein was taken from what they saw; instead of which, neither of these witnesses saw the fatal blows actually struck.

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Case of  
HURREE  
MISSEER.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND CHYTUNKISHEN SAHA

*versus*

SHEIKH SYNUDDEEN.

Dacca.

CRIME CHARGED.—1st count, stealing cash to the amount of Rupees 300, the property of his masters Chytunkishen Saha and Arradhun Saha; 2nd count, keeping the same in his possession, knowing it to have been acquired by theft.

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Case of  
SHEIKH SYN-  
UDDEEN.

CRIME ESTABLISHED.—Stealing cash to the amount of Rupees 300 and keeping the same in his possession, knowing it to have been acquired by theft.

Committing Officer.—Mr. C. Jenkins, Officiating Magistrate of Dacca.

Prisoner con-  
victed. Re-  
marks on ab-  
sence of pre-  
cise reason for  
commitment.

Tried before Mr. E. S. Pearson, Officiating Sessions Judge of Dacca, on the 19th January, 1857.

*Remarks by the Officiating Sessions Judge.*—The prosecutors in this case despatched a boat in charge of their gomashtah Mothoora Kanth Saha, witness No. 3, with Rupees 471 in charge of the said gomashtah, the Rupees were put into two bamboo cylinders, of which one contained Rupees 300, and the other the remainder. The gomashtah says he made over the money to defendant who was one of the crew; and a few days after they had started, the gomashtah told Punnoo, witness No. 9, likewise one of the crew to look under the deck where the bamboo cylinders had been placed to see if they were all right. He looked and found the one containing Rupees 300 gone. The gomashtah then threatened the crew and then defendant confessed that he had taken the money and would get it back if they send some one with him. Punnoo went with him to Arif chowkeedar's house, with whom defendant said the Rupees were, and went in, but did not return, and Punnoo went back without him. Afterwards notice was given at the thannah and the two chowkeedars, witnesses Nos. 1 and 2, caught defendant skulking



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Case of  
SHEIKH SYN-  
UDDEEN.

near a house in mouzah Futtickjomi with 98 Rupees upon him, and apprehended him. He confessed both there and before the Magistrate to the theft in company with Arif chowkeedar.

The theft is well proved against him by the evidence of the witnesses here and his mofussil and foudary confessions. The defendant pleaded *not guilty* and denied his confessions, but did not state that they had been extorted.

In concurrence with the *futwa* of the law officer he is convicted on both counts, and sentenced to three (3) years' imprisonment with labor in irons.

The Magistrate will be instructed that he should have disposed of this case himself, as the fact of defendant being in the prosecutor's service at the time was not sufficient to remove the case from his cognizance.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence clearly proves that the prisoner was seized with the 98 Rupees 4 annas; that he confessed voluntarily before the Police and the Magistrate; that he was employed as a boatman of the boat on which the money was, when the theft occurred; and had been in the service of the prosecutor before, but had left it, and again returned to it in the Assar or Jeyte before the theft. His defence at the Sessions is that the prosecutor forced the money upon him, and then had him seized. This is in no way substantiated. His appeal urges that he *is* a servant of prosecutor, and that it is most improbable that he should have taken the money; and next he refers to his previous character. The guilt of the prisoner is clearly proved, and we reject the appeal.

We observe that the Magistrate made the commitment because "under the circumstances of the present case the prisoner was deserving of more severe punishment than it is within my competency to award." He should have stated *precisely the circumstances which by law required the commitment*, and how that law applied to those circumstances in *this* case.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

MUSST. BOCHOU (No. 1, NON-APPELLANT) MONEERAM  
RAHOO (No. 2,) MADHUBRAM DEB (No. 3,) AND  
SHEIKH JUNGOO CHOWKEEDAR (No. 4.)

Sylhet.

1857.

CRIME CHARGED.—1st count, No. 1, culpable homicide of Musst. Bhubance widow, by administering and causing to be administered medicine for procuring abortion; 2nd count, Nos. 2 and 3, being accessories before and after the fact contained in the 1st count; 3rd count, No. 4, being privy in the crime charged in the counts.

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Case of  
MONEERAM  
RAHOO.

CRIME ESTABLISHED.—No. 1, culpable homicide, Nos. 2, and 3, being accessories before and after the fact of the culpable homicide; No. 4, being privy to culpable homicide.

Prisoners  
convicted of  
privy. Re-  
marks on pun-  
ishment of  
police for neg-  
lect of duty.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Sylhet.

Tried before Mr. M. Shawc, Officiating Sessions Judge of Sylhet on the 30th December, 1856.

*Remarks by the Officiating Sessions Judge.*—This is a case of culpable homicide by administering drugs to procure abortion, the particulars are as follows.

Prisoner No. 2, Moneeram was intimate with the deceased in consequence of which she was three or four months gone with child by him.

Prisoner No. 1, brought some medicine for the purpose of procuring abortion and caused the same to be administered to the deceased in the presence of prisoners Nos. 2 and 3, and from the effects of which she died on the 15th November, corresponding with the 1st of Aughun last and after her death the corpse was burnt and the fact concealed by prisoners Nos. 2 and 3; prisoner No. 4, the chowkeedar of the village did not give any information to the police, notwithstanding he knew that the deceased had died an unnatural death. The charges against all the prisoners have been proved by their own confessions before the police and the Magistrate, as well as by the evidence of the eye-witnesses and by the circumstantial evidence. The prisoners before this Court plead *not guilty*, but their thannah and foudjary confessions have been duly attested by the subscribing witnesses thereto and proved to have been voluntarily made. The assessors convict prisoner No. 1, of

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Case of  
MONCERAM  
RAHOO.

culpable homicide and prisoners Nos. 2 and 3, of being accessories before and after the fact and prisoner No. 4, of privy and in which verdict I concur and sentence them as follows.

*Sentence passed by the lower Court.*—No. 1, imprisonment without irons for (3) years from this date and to pay a fine of Rs. (50) fifty on or before the 9th January, 1857 or in default of payment to labor as suited to her sex, until the fine be paid or the term of her sentence expire. Nos. 2 and 3, imprisonment without irons for (2) two years and (30) thirty Rs. fine each and to labor as suited to their sex until the fine be paid or the term of their sentence expire. No. 4, imprisonment without irons for (1) one year and a fine of (25) Rs. and to labor as suited to his sex until the fine be paid or the term of sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We consider the evidence of the witnesses, Teeluknath and Kalanath, contradictory and unworthy of credit. They state before the Magistrate that they saw deceased's pregnancy, which they say before the Sessions Judge they heard of. They have all the appearance of being tutored to make the charge stronger against the prisoners. Had they been present when Bhowanee, deceased, received the medicine from Boohun, and took it, their names would doubtless have appeared in one or other of the confessions made by the prisoners. The other witnesses merely state what they heard after the death of Bhowanee. There is therefore no other evidence against the prisoners, but their own confessions. The prisoner Boohun, No. 1, admits that she knowingly administered drugs to procure abortion, and adds that she has frequently administered the same to other women without any fatal effects. This prisoner has not appealed; and the Court would only remark that the sentence passed in her case seems much too lenient. In the case of Sheikh Batye and others tried by the Court on 2nd instant, the Sessions Judge of Sylhet remarked that this description of crime was unhappily very prevalent in the district, and noticed the necessity of inflicting severe punishment on parties convicted of it. Under such circumstances the Court consider the sentence upon Musst. Boohun unsuitable, but are of course unable to enhance the measure of punishment awarded by the Sessions Judge.

• The prisoner Madhub states that he saw the deceased eat some leaves given her by Boohun; that she told him it was medicine for a pain in her stomach; and it was only when Bhowanee was dying that she acknowledged herself to be with child; and that the medicine she had procured from Boohun was taken to procure abortion. This prisoner and Monceram Rahoo then burnt her body.

Moneeram admits that he saw Bhowanee take the medicine from Boohun; who, when asked by Madhub, said it was for a stomach-ache; that after her death Madhub came and told him that Bhowanee had died from the effects of the medicine administered by Boohun, and from friendship he assisted Madhub in burning the body.

The prisoner Jungoo chowkeedar says he heard that the deceased's death happened under suspicious circumstances; but, being unable to obtain proof of this, he made no report to the thannah, lest he should be punished for making a false complaint.

We convict the prisoners Madhubram and Monee Rahoo on their own confessions of privity to the crime of administering medicine to the deceased to procure abortion, and sentence them each to imprisonment for six months from the date of the conclusion of the Sessions trial, and to pay a fine of Rs. 15, within ten days from intimation of this order, in lieu of labor. There is not sufficient evidence to prove the prisoner Jungoo guilty of privity; but he is guilty of not reporting death under suspicious circumstances, which he was bound to do. Under the Precedent of this Court, page 965, part II of Nizamut Adawlut Reports for 1856, this prisoner should have been punished under the general laws for neglect of duty; and not committed for privity. We therefore acquit him, and direct that he be released.

1857.

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April 30.

Case of  
**MONEERAM**  
**RAHOO.**



## SUMMARY CASES,

FEBRUARY, MARCH AND APRIL, 1857.

N. B.—*The Summary Cases for February and March, were accidentally omitted from the Nos. for those months.*



SUMMARY CASES,

FOR FEBRUARY AND MARCH.

Note.—*The Cases for February and March, were accidentally omitted from the Nos. for those months.*

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

NO. 7 OF 1857.

GOVERNMENT

*versus*

AMJAD ALI.

CRIME CHARGED.—*Riot with murder.*

*Abstract of grounds of appeal.*

Petitioner begs that he may be admitted to bail until his case, appealed to the Nizamut Adawlut, is finally disposed of.

Tipperah.

1857.

February 4.

JUDGMENT.

Case of  
AMJAD ALI.

We have read the decision of the Sessions Judge : and see a strong *primâ facie* case, as to the guilt of the petitioner in instigating an affray resulting in homicide. We consider that it is only when there is *primâ facie* reasonable ground for considering such a conviction wrong, that bail in such cases as this should be allowed. The case\* cited by the Counsel is one of concealment of dacoity, and the circumstances are not the same as those of this case ; and the prisoner in that case was on bail *before*. In this case petitioner is duly convicted of a heinous offence by the Sessions Judge, and is not *on* bail. We reject the petition.

Remarks on  
a case of affray  
with homicide,  
where bail was  
refused by N.  
A.

\* 15th December, 1856.



PRESENT :

A. SCONCE, Esq., *Judge* AND G. LOCH, Esq., *Officiating Judge*.

No. 9 OF 1857.

GOVERNMENT

*versus*

24-Pergun-  
nahs.

RAMKANYE CHOWDHREE, MOOKHTAR.

1857.

Dismissal from mookhtearship, owing to bad character.

*Abstract of grounds of appeal.*

February 28.

Case of  
RAMKANYE  
CHOWDHREE.

I. The petitioner being formerly convicted of forgery and punished for the same, is not legally liable to dismissal from his professional office as *mookhtear*.

II. The petitioner, cites the precedents of the Nizamut Adawlut, dated respectively the 26th March, 1855, 25th June, 1853, and 23rd April, 1855.

Appeal does  
not lie to N.A.  
from order of  
S. J. as to dis-  
mission of  
*mookhtear*.

No. 10 OF 1857.

GOVERNMENT

*versus*

ABDOOL HUMEED, PETITIONER.

Dismissal from mookhtearship.

*Abstract of grounds of appeal.*

I. The petitioner, being imprisoned for two months in one case and fined 30 Rupees in another of assault, does not render him liable to dismissal from the office of *mookhtear*.

III. The word *dagabazee* inserted in the Sessions Judge's *roobakaree* is superfluous, as such word cannot be found in the *kyfeut* submitted by the mohafez.

IV. Cites precedents as above.

JUDGMENT.

*In No. 9, Mr. A. Sconce.* This appeal is preferred from the decision of the Sessions Judge of the 24-Pergunnahs, whereby he confirmed an order of the Magistrate of the same district, refusing leave to the petitioner to practice professionally as a *mookhtear* in his Court. A preliminary objection is taken by Baboo Ramapersaud Roy, on the part of the Government Advocate, that the order objected to cannot be heard by this Court.

We observe that it is laid down in Section 6, Act XXIV. of 1837, that the decision of a Sessions Judge made in appeal in any judicial proceeding, other than a criminal trial, shall not be open to revision by the Nizamut Adawlut. The same rule is

substantially confirmed by Section 2, Act XXXI. of 1841, in which it is declared, that an order passed by a Sessions Judge in an appeal preferred to him in a judicial proceeding other than a criminal trial, shall be final. In the case before us, the Magistrate has not set forth the law by which he has been guided, but he appears to have exercised the authority vested in him, by Section 3, Act XXXVIII. of 1850, and to have refused leave to the petitioner to practise as an "authorised agent" in his Court on behalf of prosecutor or witnesses. This order I conceive to be a judicial proceeding in the meaning of the Acts above quoted; that is, a proceeding held with a view to the legal management of cases arising from judicial prosecutions or complaints, and as the order of the Sessions Judge is not open to revision by this Court, I would reject the appeal.

*In No. 10, Mr. A. Sconce.* A similar petition has been presented by Abdool Humeed which, for the above reasons, it is not competent to this Court to hear.

*In No. 9, Mr. G. Loch.* Section 3, Regulation IX. 1831, declared "that cases of a miscellaneous nature, other than criminal trials were not cognizable by the Nizamut Adawlut. In such miscellaneous cases an appeal lay to the Commissioner of Circuit as Superintendent of Police, whose decisions could only be impugned by a regular suit or by reference to the Governor-General in Council." In elucidation of the law, the Court issued with the sanction of Government, Construction 914, and the purport of the law is thus explained in Mr. Turnbull's minute; "In all other cases which, as contra-distinguished from criminal trials, have always been understood as comprehended in the term 'miscellaneous,' and are therefore so designated in the Section, (3) the appellate authority has been transferred to the Commissioners of Circuit, with the reservation of a further appeal to the Governor-General in Council, in those cases in which the party deeming himself aggrieved may prefer that course instead of resorting immediately to the Civil Courts, as in cases of forcible dispossession or other actionable cause; or in which the nature of the case may be such as not to admit of remedy by civil action, as in the case of alleged injustice towards the native officers of Government, police or ministerial, by Magistrates or other officers to whom they are subordinate. For the one the ordinary remedy by suit is provided, for the other by appeal to Government."

Section 3, Regulation IX. 1831, was so far modified by Section 3, Act XXIV. 1837, that the functions of the Commissioners of Circuit, as an appellate authority in miscellaneous cases, ceased whenever a Superintendent of Police was appointed under that Act. By Section 4, the Superintendent of Police had cognizance of all cases relative to the appointment and removal of police and ministerial officers; and wherever a Sessions Judge

1857.

February 28.

Case of  
RAMKANYE  
CHOWDHREE.

1857.  
February 28.  
Case of  
RAMKUNYE  
CHOWDHREE.

was appointed on whom the whole administration of criminal justice vested, all other orders passed by a Magistrate, whether in criminal trials, or in any judicial proceedings whatever, were, under Sections 5 and 6, declared appealable to the Sessions Judge, and his order in any *judicial proceeding*, other than a criminal trial, was declared to be *not open to revision by the Nizamut Adawlut*.

It is evident, therefore, that the Nizamut Adawlut was, by Section 3, Regulation IX. 1831, deprived of the power of taking cognizance of any cases whatever of a miscellaneous nature, the object of the legislature being, as far as could be, to make the orders of the first Court of appeal final. By Act XXIV. of 1837, cognizance of appeals relative to police and ministerial officers was assigned to the Superintendent of Police, and cognizance of all other miscellaneous matters called in that law "judicial proceedings other than a criminal trial" was assigned to the Sessions Judge. The power of taking cognizance of miscellaneous cases of any kind, which was taken away from the Nizamut Adawlut by Regulation IX. 1831, has not been restored by any subsequent enactment; and therefore I do not think this Court can admit the appeal. Appeal rejected.

*In No. 10, Mr. G. Loch.* The object of this petition is similar to that presented by Ramkunya Sircar, which for reasons assigned in that case, has been rejected. This petition is also rejected.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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E. Burdwan.

1857.  
March 2.  
Case of  
NEELKUMUL  
GHOSE.

No. 20 OF 1857.  
NEELKUMUL GHOSE, PETITIONER  
*versus*  
GOVERNMENT, OPPOSITE PARTY.

*Abstract of grounds of appeal.*

- In cases of forfeiture of his security, without calling for a defence from the petitioner, amount of recognizance, defence should be previously taken.
- I. The order of the Magistrate for realizing the amount of his security, without calling for a defence from the petitioner, is improper.
  - II. The order passed by the Magistrate to produce the defendant in this case, is contrary to the provisions of the Circular Order No. 287, dated 2nd April, 1824.

JUDGMENT.

The Magistrate has estreated the recognizance, as the bail did not cause the appearance of the party bailed within one

day. The Sessions Judge has held that the Magistrate was right.

1857.

The petitioner urges, that the proper course under Construction 1233 and Circular Order, volume 1, No. 70, para. 2, would have been first to call upon petitioner to shew cause, and that this was not done.

March 2.

Case of  
NEELKUMUL  
GHOSH.

We find this objection valid, and reverse the Sessions Judge's order accordingly. The Magistrate should proceed as directed in the Circular Order cited.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

BRIJOMOHUN

*versus*

GUNGARAM BOOEAH.

Midnapore.

1857.

This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. of 1841, and Circular Order dated 18th March, 1842, by Mr. G. P. Leycester, Officiating Sessions Judge of Midnapore, on the 4th December, 1856, with the following report.

April 13.

Case of  
GUNGARAM  
BOOEAH.

"The prosecutor states himself to be the *surburakar* of a certain zemindar, and that the defendant, who is a darogah in the Department of Public Works, after some dispute and altercation with him, in regard to supplying coolies for the embankments, sent his peadars on the 15th March, and seized him as he was about to proceed to his masters, with upwards of 300 Rs. of rents which he had collected, and dragged him to the darogah's lodgings; that there he was severely beaten and the money taken from him; that he was afterwards carried off to other places and imprisoned for some days."

Remarks on  
C. O. 17th  
July, 1851: on  
necessity of  
judge's opini-  
ons of what or-  
ders should be  
passed; and  
on proper pre-  
paration of  
conviction  
statement by  
Magisterial  
officers.

"The darogah urges in his defence that the prosecutor was one of his duffadars under advances, and that the case has been trumped up by Fukeer Chunder Putnaik and other farmers."

"The prosecutor adduces witnesses who support his complaint steadily. The defendant, amongst other pleas, sets up an *"alibi."* The Deputy Magistrate with the charge of assault and plunder of this large sum of money before him, finds the darogah guilty of assault and false imprisonment; and, totally silent as to the allegation of the plunder of 300 Rs. and more, imposes a fine of Rs. 25 on the darogah."

"The defendant urges that it was altogether irregular in the Deputy Magistrate of Nugoowa, Moulvee Waheedoon Nubbee, if he deemed so serious a charge proved, to limit the punish-

1857.

April 13.

Case of  
GUNGABAM  
BOOEAH.

ment within the provisions of Section 8, Regulation IX. 1793, and prays that notice be taken of the matter under Circular Order 106, dated 18th March, 1842."

"It appears to me that the finding in this case is very inconsistent, and the punishment incompatible, and most inadequate."

"If the most important and serious part of the charge was disbelieved by the Deputy Magistrate, no conviction should have followed."

"A little more than a month after this charge was made, another was brought against the prosecutor for carrying off two of the darogah's people; one of them was recovered; the other is said to have had no existence; yet when a comrade comes forward and avows the contrary, no enquiry is made into his petition. The case was dismissed."

"Under the impression that such inadequate enquiry into, and unsatisfactory and incomplete disposal of cases has a tendency to foment quarrels rather than suppress them;—quarrels which are very likely to result in more serious breaches of the peace;—I feel it my duty, under the Circular above quoted, to submit the case for such order as the Court may deem requisite."

*Resolution of the Nizamut Adawlut.*—Present: Messrs. B. J. Colvin and J. H. Patton, No. 1090 dated 19th December, 1856.

The Court observe that the Officiating Sessions Judge has omitted to conform to the directions contained in Circular Order No. 65, dated the 17th July, 1851. The case is therefore returned that its instructions may be carried out. Moreover he has submitted the case for the orders of the Court without stating what orders should in his opinion be passed, which he was bound to do. Should he see reason, after the receipt of the Deputy Magistrate's explanation, to re-transmit the case, he will be explicit on this point.

*In reply to the above Resolution*, the Sessions Judge of Midnapore submitted the following letter No. 31, dated 7th February, 1857.

"The substance of the explanation offered by the Deputy Magistrate is that 'the prosecutor indeed adduced witnesses in support of his complaint (assault and plunder) but it being common with the natives to blend truth with falsehood, and to exaggerate all cases more or less in order to make them appear more serious, I considered the charge of plunder as an exaggerated appendage, and punished the defendants for assault only.'

"It appears to me a dangerous doctrine that a Magistrate should, when witnesses are adduced in support of the whole charge, reject the more serious part of it, and dispose of the case

by an order from which there is no appeal. His duty is to sift the truth from the falsehood, and pronounce judgment accordingly. If the more serious part be an exaggerated appendage to the charge, it cannot but militate against the truthfulness of the witnesses."

"The order passed in this case is not appealable, or reversible by me, nor was I aware from the tenor of the law, or Circular Orders framed thereon, that there was any necessity for my stating what orders should be passed; but I am of opinion that the Deputy Magistrate should have thoroughly sifted the charge of plunder by taking such further evidence as would enable him to come to a decided opinion on that part of it, instead of disposing of the case on a surmise. I could not come to an opinion without such further sifting enquiry."

"It still appears to me that the order of a fine of 25 Rs. on a charge of assault, false imprisonment and plunder of 300 Rs. was incompatible and inadequate, and, as the gravamen of it is now declared to be disbelieved, is injudicious. My object in submitting this reference is not to touch the sentence. The law leaves it intact, but that by the expression of the Court's opinion greater care in the disposal of such cases may be induced."

"The only material remarks in regard to the last paragraph of the explanation is, that the Deputy Magistrate himself should have thoroughly investigated the case and not have left it to the police."

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley, No. 299, dated 13th April, 1857.)

The Court observe that the charge in Column 6 of the *Conviction statement* is substantially assault and taking of Rupees. In column 7 is entered the single word "proven." In the last column containing the presiding officer's decision (to be written in his own hand in his vernacular language) is entered a judgment which is far from clear, or recorded upon well-stated definite judicial grounds. The Court, however, infer from its expressions that the Deputy Magistrate intended to state that the taking of Rupees was not sufficiently proved, and that the assault was; and that for the latter offence the fine of 25 Rs. was inflicted. In this view, Column 7 has an incorrect entry; and the Court would, in this place, observe that Column 7 should contain in full, not that the offence *charged* is established, but *what specific* offence is established, by a record in precise terms of such offence, so established.

The Court trust that the Deputy Magistrate will in future be more careful to conform to the views here expressed.

1857.

April 13.

Case of  
GUNGARAM  
BOORAH.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

Beerbhoom.

KOORARAM HARREE.

1857.

CHARGE.—Bad character.

April 13.

The following is an appeal against the decision of the Sessions Judge of Beerbhoom passed on the 6th February, 1857.

Case of  
KOORARAM  
HARREE.

The appellant was reported by the Officiating Magistrate to be of bad character, and recommended by him to be required to furnish security for future good behaviour for the period of three years in 500 Rs., and in default thereof to be imprisoned

Remarks on  
the proper ap-  
plication of  
the law for se-  
curity for good  
behaviour, viz.  
Reg. 8 of 1818.

for that period, with labor and irons.

The prisoner appealed against the Officiating Magistrate's orders, and the Sessions Judge on the 6th February, 1857, dismissed his appeal, confirming the Officiating Magistrate's decision.

*Resolution of the Nizamut Adawlut.*—Present: Messrs. G. Loch and H. V. Bayley, No. 301, dated 13th April, 1857.

The Court have perused the whole record of the above case. It has been appealed to the Nizamut Adawlut, as the order is one which, under Section 9, Regulation VIII. of 1818, can only be finally passed by the Sessions Judge. Therefore under Section 2, Act XXXI. of 1841, the appeal lies here. The appellant urges no special pleas, but requests a reference to the record by this Court, in order that it may decide whether there are grounds for the sentence of three years' imprisonment with labor and irons, in default of finding security for good behaviour to the amount of 500 Rs. The Court do not think there are. The Magistrate acted under Clause 1, Section 9, Regulation VIII. of 1818. That provision refers to a person "by habit a robber," &c. or "dangerous, desperate or irreclaimable." The Court observe that there was no return of the record-keeper as to previous convictions. But the evidence shows that the appellant was once imprisoned for theft some years ago. The same evidence shows no more of bad character than being of "suspicious livelihood" or "notoriously bad character" referred to in Section 1; the details in evidence being generally to the effect of those in the terms of Section 20, Regulation XX. of 1817. There is not in the Court's opinion sufficient evidence to bring the case under Section 9 of Regulation VIII. of 1818. The Magistrate will therefore dispose of the case under Sections 1 and 8 of the law cited. The Magistrate should base his judgment on the evidence before him, and upon that only. There are many irrelevant remarks in his decision.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

CHUNEE DHOPA

*versus*

BONOMALEE SEAL.

Moorsheda-  
bad.

CRIME CHARGED.—Assault.

This case was referred to the Nizamut Adawlut, under Section 5, Act XXXI. of 1841, and Circular Order, dated 18th March, 1842, by Mr. A. Pigou, Officiating Sessions Judge of Moorshedad, on the 9th January, 1857, with the following report :—

“Chunee Dhopa presented a petition of assault against Bonomalee Seal and others, and it appears that during the assault he sustained a simple fracture of the arm ; on the 8th November he filed a *razeenamah*, withdrawing from his plaint. This was rejected, and on the 30th ultimo, the Officiating Magistrate convicted Bonomalee Seal, and considering the case one of aggravated assault, sentenced him to fifteen days' imprisonment. An appeal was preferred before me, but as by the above Act, I have no authority to entertain an appeal against such orders, I am constrained, for the following reasons, to submit the case to the Superior Court. It appears to me that the Magistrate is prohibited by Section 8, Regulation IX. of 1807, from receiving a *razeenamah* in cases of a heinous nature, but this case not having been of a heinous nature, it follows that he was *competent* to receive one in it ; being therefore thus competent, the point to be considered is, whether it was not *obligatory* in him to do so, and not having done so, whether his subsequent proceedings were not illegal. It is clear to me that as a case of assault can be entertained by a Magistrate, only upon petition presented by a prosecutor, and therefore on such prosecutor withdrawing his complaint by a *razeenamah*, there is, from that moment no charge legally before the Magistrate, and consequently he cannot legally punish the persons named in the petition of complaint, and in this case, had the Officiating Magistrate considered it to be a heinous one, he would have stated his reasons for so considering it, but there is nothing to show this was a heinous case ; on the contrary it does not come within the meaning of heinous crimes, as heinous crimes are such as are not by the Regulations bailable, and therefore such as require exemplary punishment for the ends of public justice ; whereas this was merely a case of assault and private injury, and consequently it *was obligatory* on the Officiating Magistrate to accept the *razeenamah* and release the prisoner, and not

1857.

April 13.

Case of  
BONOMALEE  
SEAL.

Remarks on  
the discretion  
allowed to a  
Magistrate, to  
accept *razeen-*  
*amahs* in  
other than hei-  
nous cases.



1857.

April 13.

Case of  
BONOMALEE  
SEAL.

having done so, his proceedings subsequent to the filing of the *razeenamah* were illegal. I therefore beg to recommend that the prisoner be released."

On perusal of the above, *the following letter was addressed* to the Sessions Judge of Moorshedabad, No. 35, dated the 22nd January, 1857.

With reference to your letter No. 6, dated the 9th instant, referring under Section 5, Act XXXI. of 1841, the case of Bonomalee Seal, charged with assault, I am directed by the Court to return the record of the case, and to request that you will comply with the provisions of the *Circular Order No. 65, dated the 17th July, 1851*, which requires that, previous to reporting to this Court, a copy of your intended report be sent to the Magistrate for such *explanation* as he may think proper to furnish.

*In reply to the above*, the following letter was submitted by the Sessions Judge No. 31, dated the 4th February, 1857.

"In continuation of my letter, No. 6, dated 9th January last, and with reference to your reply, No. 35, dated 22nd idem, I have the honor to submit the explanation called for from the

Chunee Dhopa

*versus*

Bonomalee Seal, charge assault.

Magistrate in the case noted in the margin (which is also forwarded) which he has supplied in a letter dated 31st idem.

The Officiating Magistrate's reason for refusing to accept the *razeenamah* appears to have been an idea that the case was of so heinous a nature as to require punishment for the good of the public, but this was a case of sudden assault, and the blow caused merely a simple fracture of the arm, and the prisoner, whose case is now before the Court, Bonomalee Seal, is a lad of fifteen years of age, which fact would at once lead to the supposition that the case could not be one of public consequence; and if the Officiating Magistrate considered it to be of so aggravated a character as to preclude the acceptance of the *razeenamah*, he ought to have stated his reasons for doing so, and to have made Government the prosecutor; the reason now given for not doing so carries no weight, as the prosecutor having once withdrawn from the charge, the case could not legally proceed without Government as a prosecutor."

"The decision of the Superior Court will be at once an answer to the question put at the end of the Officiating Magistrate's letter, as it is partly on the broad grounds of the incompetency of a Magistrate to refuse a *razeenamah* in cases that are bailable, that the reference has been made by me. In conclusion, I have only to add that nothing the Magistrate has stated has altered the opinion expressed in my above letter of reference."

From the Officiating Magistrate of Moorshedabad to the Sessions Judge of that district dated 31st January, 1857.

"I have the honor to acknowledge the receipt of your letter No. 24, dated the 27th instant, and in reply to report as follows, regarding my reasons for rejecting the *razeenamah* in the case referred to."

"On the 14th of October, one Chuneo Dhopa appeared in my Court with a fractured arm, and instituted a charge of assault with wounding against the appellant and four others. From the evidence, it appeared that, by the order of the appellant, the other parties above referred to, rather severely beat the complainant and fractured his arm. Whilst the case was still pending, on the 18th of November, a *razeenamah* was filed, but considering that, under Section 8, Regulation IX. of 1807, even if the wording of the law did not render the rejection of the *razeenamah*, compulsory, it, under the general interpretation put upon it by the judicial authorities in this district, and as I am given to understand also by those of others, was at least optional with the Magistrate to accept or reject it. I rejected the *razeenamah*, and proceeded with the trial. I would submit for the consideration of the Court that a case of this description, in which four men, by order of an influential person, set upon a man in open day, beat him, and fractured his arm, can hardly be deemed a trivial case or an inconsiderable assault, in which it matters but little to society whether the parties escape punishment or not, but is rather one in which society in general is concerned, and for which the payment of a few rupees to the plaintiff can hardly be deemed sufficient punishment to put a stop to such proceedings in future. The reason why I did not sentence the appellant to the same term of imprisonment as the other parties concerned in the case, is that he was not the person who actually wounded the plaintiff; and would, from his position feel the punishment and disgrace of imprisonment, more than the other parties; and I did not, on the other hand, fine him, as a fine of Rupees 200 would not have been an adequate punishment for him. I must also add that after the rejection of the *razeenamah*, the plaintiff of his own free will was present and superintended the proceedings throughout the trial, and therefore there was no necessity for making Government prosecutor in the case. Independent of the present case, as it appears from your decision that a Magistrate is prohibited from rejecting *razeenamahs* in cases in which bail may be taken, and can only consequently reject them in the offences specified in Clause 8, Section 25, Regulation XX. of 1817, I request the favor of your obtaining for my future guidance the instructions of the Sudder Nizamut Adawlut, as to whether I have any option left me or not in bailable offences."

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley,) No. 302, dated the 13th April, 1857.

1857.

April 13.

Case of  
BONOMALIE  
SEAL.

1857.  


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 April 13.  
 Case of  
 BONOMALEE  
 SEAL.

The Court observe that Section 8, Regulation IX. 1807, while it prohibits a Magistrate admitting a compromise in cases of a heinous nature, does not render it *imperative* on him to receive a compromise in other cases in which he may think it advisable for the ends of justice to punish the parties charged. In fact the law leaves the acceptance or rejection of a *razeenamah* in cases other than heinous to the discretion of the Magistrate. In a heinous case, should the original prosecutor be unwilling to carry it on, the Government should be constituted the prosecutor. The Court therefore, with reference to the circumstances on the record, see no grounds for interfering with the Magistrate's order.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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JOOLMEEKHAN BURKUNDAZ

*versus*

Moorsheda- RAMDHUN PRAMANICK AND RAMKANYE PRAMA-  
 bad. NICK.

1857.  


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 April 27.  
 Case of  
 RAMDHUN  
 PRAMANICK  
 and others.

This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. of 1841, and Circular Order dated 18th March, 1842, by Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 13th March, 1857, with the following report.

"In a case before the Deputy Magistrate of this district a summons was issued on one Ramdhun Pramanick, and on his failing to appear, a warrant was sent to the darogah to apprehend him; this warrant was entrusted to a burkundaz to execute, and he reported that he had been resisted and the prisoner rescued from him and that the present appellant\* had assaulted him; the Deputy Magistrate considering, as stated in his hand-writing, that the offence of "assisting in disobeying the foudjary order and disgracing the police," was proved against this appellant sentenced him to a fine of 50 rupees or imprisonment for fifteen days; the appellant appealed, and as I have no authority to interfere in such an order, and am of opinion that the appellant has been improperly sentenced, I am obliged to submit the case for the supervision of the superior Court."

\* Ramkanye Pramanick.

Remarks on references to N. A. under Sec. 5, Act XXXI. of 1841, on matters of fact, and credibility of evidence.

"The Deputy Magistrate considered the appellant guilty of the offence stated above, but in the conviction statement column

No. 7, (which ought to shew the offence proved,) merely bears a mark thus ||, which led me to suppose that he was punished for the offence stated in column No. 6, instead of the offence stated in the decision; the Deputy Magistrate in the explanation,\* a copy of which is sent herewith, says it was not so, and that column No. 7, was not filled up by mistake, but I must remark that his Bengalee monthly statement bears record of the appellant having been punished not for the offence written in the decision but "for disobeying the foudjary order and beating the burkundaz."

The only evidence brought forward by the burkundaz to substantiate his charge was the testimony of two witnesses; one of them, Juggoo, certifies to the burkundaz being abused, names the appellant and says that no beating took place,

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\* From the Deputy Magistrate of Moorshedabad to the Officiating Magistrate of Moorshedabad, dated 9th March, 1857.

Agreeably to your order of the 4th instant calling upon me to furnish an explanation in the case noted in the margin, required by the Sessions Judge, I have the honor to submit as follows.

Joolmeekhan burkundaz

versus

No. 1, Ramdhun Pramanick.

No. 2, Ramkanye Pramanick.

1st. That considering the charge of the resistance of the foudjary process against the defendant No. 1, and of assisting in the same against the defendant No. 2, having been substantiated, and no insufficiency and inconsistency elicited in the evidence of the witnesses to that particular charge, I sentenced the defendants to pay fines as stated in the conviction statement. The Sessions Judge considered the evidence of the witnesses as contradictory; because the witness Juggoo named the defendant No. 2, while the witness Kubeer does not name him at all. But I respectfully beg to observe that although the witness Kubeer did not directly name the defendant No. 2, which the witness No. 1 did, yet as he mentioned him as *bhatija* or nephew of the defendant No. 1, and which is actually the case, I considered his evidence as corroborating in substance that of the other witness.

2nd. The Sessions Judge has been further pleased to remark that the same evidence, on which I considered the above case as proved, was discredited by me in the case of the jemadar connected with it. But I beg to state that the depositions of the witnesses in the jemadar's case were considered by me somewhat exaggerated, and accordingly discrediting their evidence in this (jemadar's) case I dismissed the imputed charge of the jemadar, but I did not doubt their veracity on the main fact, that is the resistance of the execution of the warrant, (from whence the jemadar's case was subsequently got up,) a fact which was corroborated when the *darogah* carried on the local investigation.

3rd. To explain why I sentenced the prisoner No. 2, in one charge when I considered him guilty in another, I beg to state that on perusal of the vernacular form No. 1, of conviction statement, I find that it is not so as led the Sessions Judge to remark. In column No. 6 the imputed charge is entered, but not the crime established, which has a separate column, viz. 7 which by mistake was not filled up.

4th. By an oversight the provision of the Circular Order of the 19th September, 1856, was not carried out.

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while the other, Kubeer, does not name the appellant at all; it is said in another case connected with this one that the jemadar hearing of the alleged resistance of process, went to the house of Ramdhun and that he also was assaulted; the same two witnesses were brought forward to substantiate that charge, but the Deputy Magistrate in that case not believing their evidence dismissed it, and yet on the evidence of those very witnesses given on the same day, he sentenced this appellant; I am of opinion that the Deputy Magistrate's explanation on this point is unsatisfactory, and therefore considering that neither the burkundaz's charge nor the presence of the appellant at the alleged disturbance is proved; I think that the appellant is entitled to a refund of the fine. The Deputy Magistrate now states that Kubeer although he did not name the appellant yet he mentioned him as Ramdhun's *bhatija*, but there might be twenty *bhatijas*; it is no proof against *this* appellant that a *bhatija* was present, and it shews great carelessness in the Deputy Magistrate's proceedings, that the witness was not questioned as to who was intended by the word *bhatija*."

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 354, dated 27th April, 1857.

The Court remark that it has heretofore been ruled by the Nizamut Adawlut that a mere difference of opinion between the Sessions Judge and Magistrate, as to the comparative weight to be given to the evidence on which a conviction has been founded, does not, in their opinion, warrant a reference under Section 5 of Act XXXI. 1841. The present reference is made on the ground that the conviction by the Deputy Magistrate was on evidence which the Officiating Sessions Judge does not consider sufficient; but with advertence to the previous practice of the Nizamut Adawlut, the Court do not think it necessary to interfere with the order of the Deputy Magistrate.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

RABUTEE AUGOORINI (No. 3,) JOGESHUR HAJRA  
(No. 4,) AND SHIORNOMOI AUGOORINI (No. 5.)

E. Burdwan.

CRIME CHARGED.—No. 3, perjury, in having on the 6th December 1856, intentionally and deliberately *deposed*, under a solemn declaration taken instead of an oath *before the acting Magistrate of Burdwan*, “that on some day in Aughun last, about 12 o’clock at night Kalli Shana of the village, who has illicit connection with Manickram Hajra’s wife, that Kalli Shana was conversing with said wife in the cow-shed of the above named Hajra, which, Manickram Hajra, Subbessur Hajra and Purmessor Hajra having discovered went there, and having bound Kalli Shana’s mouth with a cloth, *the three men beat him. I saw this*, having opened the door of my house. On this, I became very much frightened, I retired into my house and shut the door, but I heard from the interior of my house the sound of the beating of Kalli Shana,” and in *having on the 9th February, 1857* again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the *Additional Sessions Judge* of East Burdwan that “on the night of one day in Aughun, having heard a noise in the cow-shed of Manickram, I opened the door of my house which is about 15 *hils* distant and saw that Bistomoni was standing near the cow-shed, on enquiry *she said* that Manick Hajra, Subbessur Hajra and Purmessor Hajra, these three men have killed my brother. It was a dark night on which account *I did not see* Manickram Hajra and the others, *and who were there I could not recognise.*” Such statements being contradictory of each other on a point material to the issue of the case. No. 4, perjury, in having on the 6th December, 1856, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the *Officiating Magistrate of Burdwan* that “I was sleeping in my house on the night of the 15th Aughun about 11 o’clock, I heard a noise on the road which is by the door of Manickram’s cow-shed, on going there *I saw* Manick Hajra, Subbessur Hajra and Purmessor Hajra beating Kallichurn Shana, but I do not know with what they were beating him. Owing to the disturbance, I having seen this ran back to my house,” and in having on the 9th February, 1857, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the *Additional Sessions Judge*

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Case of  
RABUTEE  
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and others.

Remarks on  
passing sen-  
tence, refer-  
ence for miti-  
gation, and  
evidence of  
wife against  
husband.

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Case of  
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of East Burdwan that "one night in Aughun last, having dined, I went to sleep about 11 o'clock, Bishto began to make a noise and that Manick Hajra had killed Kallichurn. On hearing this I got up and went, but I *did not see* Manick or Subbessur or Purmessor, and I *did not see* Mohesh Shana," such statements being contradictory of each other on a point material to the issue of the case. No. 5, *perjury in having on the 6th December, 1856*, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the *Acting Magistrate of Burdwan* that "*I had a love affair with Kalli Shana about a year*, and he constantly came to my house at night. On the 15th of last Aughun at night I was sleeping with my husband in the south-doored house, after my husband had gone to sleep, about 12 o'clock at night, having opened the door and gone out, I went to the south-doored cow-shed when I saw that Kalli Shana was sitting inside. I having gone in, sat by him. While we were conversing, after a little time my husband, in some manner having got information, came into the cow-shed. On hearing his footsteps I went out. My husband saw me but did not say any thing. He went in search of Kalli Shana in the cow-shed. I having got outside, heard Kalli Shana say, Do not beat me, I having heard this, ran away from fright and stood near the outside of the cow-shed, when I saw Purmessor Hajra and Subbessor Hajra coming from their own houses and going towards the cow-shed. I then ran to my own house, those two men entered the cow-shed, I having gone to my own house, went to sleep. He said nothing to me;" and in having *on the 9th February, 1857*, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the *Additional Sessions Judge* of East Burdwan that "*I do not know anything. I had no love affair with the deceased Kallichurn Shana*;" such statements being contradictory of each other, on a point material to the issue of the case.

Committing Officer.—Mr. H. B. Lawford, Officiating Magistrate of East Burdwan.

Tried before Mr. Thomas C. Loch, Additional Sessions Judge of East Burdwan, on the 16th February, 1857.

*Remarks by the Additional Sessions Judge.*—This case is sent up for mitigation of punishment under Section 9, Clause 3, Regulation XVII. of 1817.

It was by my direction the three prisoners were committed for perjury which arose in a case of culpable homicide. No. 3 for having stated in solemn affirmation taken in place of an oath before the Officiating Magistrate of East Burdwan, that she saw Manickram Hajra, Subbessor Hajra and Purmessor Hajra, bind the deceased's (Kalli Shana's) mouth with a cloth and beat him and having before this Court denied having seen the prisoners beat the deceased but only having heard that they

had done so. No. 4, for having under solemn affirmation stated before the Officiating Magistrate of East Burdwan that he saw the abovenamed parties beat the deceased and for having denied the same before this Court, and No. 5, for having stated before the Officiating Magistrate of East Burdwan on solemn affirmation, that she had a love affair with the deceased on which account the parties abovenamed went into the cow-shed where the deceased was killed, and having before this Court denied all knowledge of what took place, or of her having had any connection whatever with the deceased. Agreeing with the *futwa* of the law officer I convict the prisoners Nos. 3, 4 and 5, of perjury, but recommend that they should be only imprisoned for two years, prisoner No. 4, with labor and irons and prisoners Nos. 3 and 5, with labor suited to their sex.

My reason for recommending a mitigated sentence is, that prisoner No. 5, is wife of Manickram Hajra, the principal defendant in the culpable homicide case, and prisoner No. 4, is his nephew and also connected with the other two defendants, and therefore under all the circumstances of the case there is a considerable excuse for their attempting to screen the accused by denying their former statements, and defendant No. 3, being a woman and a neighbour would doubtless be easily persuaded to assist in the attempt.

My reason for having examined the wife of Manickram Hajra is given in the original case of homicide.

*Resolution by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 353, dated 27th April, 1837.

The Court observe that this case is referred for mitigation of punishment; but from the Judge's letter of reference it does not appear that he has *passed* any sentence on the prisoners, which he should have done, and then submitted his recommendation for mitigation.

In order, however, to save the necessity of another reference, the Court will at once express their opinion in the case. The Court do not see in the case of the prisoners Rabutee Augoorini No. 3, and Jogeshur Hajra, No. 4, any grounds for reducing the sentence of three years' imprisonment which the Additional Sessions Judge is authorised to pass. In the case of Shornomoi Augoorini No. 5, the Court think that she ought to be released. In fact, under the circumstances of the case, it appears to the Court that Shornomoi should not have been examined, for there were two eye-witnesses to the culpable homicide, out of which trial, these proceedings for perjury have arisen; and the practice of the Company's Courts permits of the testimony of a wife against her husband, in corroboration of other evidence, being received only in cases of very urgent necessity, for the purposes of justice, this was not so here. The Additional Sessions Judge is directed to pass sentence in this case, with reference to the above remarks.

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Case of  
RABUTEE  
AUGOORINI  
and others.



## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Moorsheda-  
bad.

## HURREEBUNGS, PETITIONER.

1857.

April 28.

Case of  
HURREE-  
BUNGS.

Remarks on  
civil and mili-  
tary jurisdic-  
tion.

On receipt of a petition of special appeal from the above prisoner, submitted by the Officiating Sessions Judge of Moorshedabad with his letter No. 28, dated the 29th January, 1857, the Nizamut Adawlut requested that the Judge would submit to them, in original, the proceedings connected with the trial. He did so and the Court recorded the following Resolution.—(Present: Messrs. G. Loch and H. V. Bayley.) No. 351, dated the 28th April, 1857.

The Court observe that the grounds for special appeal are that the conviction by the Magistrate is illegal, as the theft was committed within cantonments, and the prisoner ought to have been tried by Court Martial, and not by the civil authority. The Court remark that, under Article 114, Section 6, Act XIX. 1847, and Clause 3, Section 2, Regulation III. 1809, this charge can be tried by the civil authorities. The Court therefore reject the appeal.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

Dinagapore.

1857.

April 28.

Case of  
HARRA  
NUSHO  
and others.

Summary spe-  
cial appeal in-  
admissible on  
questions of  
facts, and  
value of evi-  
dence only.

## HARRA NUSHO AND OTHERS, PETITIONERS.

On receipt of a petition of special appeal from the above prisoners, submitted by the Sessions Judge with his letter No. 24, dated the 2nd February, 1857, confirming the Magistrate's orders of the 29th November, 1856, sentencing the prisoners Harra Nusho and Romun Nusho each to three years' imprisonment with labor and irons and Puchee Bewa to six months' imprisonment with labor suited to her sex, the Nizamut Adawlut called for the proceedings connected with their trial and recorded the following Resolution.—(Present: Messrs. G. Loch and H. V. Bayley.) No. 356, dated the 28th April, 1857.

The Court having perused the papers above recorded, do not find any grounds for admitting a special appeal from the orders of the Sessions Judge, as the appeal rests entirely upon facts, and the value of the evidence. The appeal under Section 2, Act XXXI. of 1841, is inadmissible, and is rejected accordingly.

REGULAR CASES.

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MAY,

1857.



MAY REGULAR CASES.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges.*

GOVERNMENT AND KUMLAKAUNTH

*versus*

SHEIKH HOOKOOM CHAND (No. 8,) SHEIKH BAZOO (No. 9,) TURIPOOLLAH (No. 10,) SHEIKH MADAREE (No. 11,) KEFOO ALIAS KEFAITOOILLAH (No. 12,) SHEIKH NUSOO (No. 13,) FUTOO CHUNG (No. 14,) SHEIKH HAZAREE (No. 15,) FUTEH KARIGUR (No. 16,) ASHKER SHEIKH (No. 17,) AND SHEIKH ZAKEER (No. 21.)

Dacca.

1857.

CRIME CHARGED.—Nos. 8, 9, 10, 11, 12, 13 and 14, 1st count, committing dacoity in the house of Kumlakaunth Sha, prosecutor, and plundering therefrom, in cash and properties, ten pieces of gold mohurs, valued at Rupees 170, silver coin and copper pice, valued at Rupees 1225, gold ornaments Rupees 225-12, silver ornaments, valued at Rupees 217-8, brass bell-metal and copper utensils, valued at Rupees 40-4, clothes, valued at Rupees 74-10-6, wooden box, &c. valued at Rupees 5, amounting in all Rupees 2,672-0-6; 2nd count, knowingly receiving the properties acquired by the above dacoity; Nos. 15, 16 and 17, committing dacoity in the house of the said prosecutor and plundering properties to the above value; No. 21, 1st count, knowingly receiving property acquired by the above dacoity; 2nd count, privy to the above dacoity.

May 4.  
Case of  
SHEIKH  
HOOKOOM  
CHAND  
and others.

Dacoity by day. Some prisoners convicted; others released. Defects in the police proceedings.

CRIME ESTABLISHED.—Nos. 8, 9, 10, 11, 12, 13 and 14, dacoity and knowingly receiving plundered property; Nos. 15, 16 and 17, dacoity; No. 21, receiving property knowing the same to have been obtained by dacoity.

Committing Officer.—Baboo Joy Chunder Goocho, Deputy Magistrate of Manickgunge with full powers.

Tried before Mr. E. S. Pearson, Officiating Sessions Judge of Dacca, on the 23rd January, 1857.

*Remarks by the Officiating Sessions Judge.*—This case was tried under Act XXIV. of 1843. The dacoity was perpetrated late in the afternoon of the great *dusserah* day, when almost all the men of the village, including prosecutor himself, were away from their houses outside the village, looking at the spectacle. Five persons, however, viz. witnesses Nos. 1, 2, 3 and 4, and another named Jakeer were in their houses at the time. Witness No. 4, a most respectable man and the landholder of the place, deposed that being unwell, he remained at home that day. That he heard the noise of women screaming in prosecutor's house, went out, and saw two men with *lattees* standing

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Case of  
SHEIKH  
HOOKOOM  
CHAND  
and others.

in the path leading to prosecutor's house to guard the entrance; that he was afraid to go nearer, but that he distinctly heard inside, the noise of breaking open chests, &c. as of a dacoity; that he called out, and first Jakeer and after him witnesses Nos. 1 and 2, came to him, and he told them to watch as the dacoits were leaving the house, and see if they could recognize any body; Jakeer returned shortly after, saying he could not recognize any one. Witnesses Nos. 1, 2 and 3, depose to having seen the dacoits in the act of leaving prosecutor's house, and that they distinctly recognized prisoners Nos. 8 to 20 inclusive. That some had bundles on their heads and some in their hands, and that they went towards Surroopdee Nugger village. Witnesses Nos. 1, 2, 3 and 4, went into prosecutor's house immediately after, and saw the signs of a dacoity having been committed. Witnesses Nos. 5 and 6, state that they saw a number of men, amongst whom they recognised prisoners Nos. 8 to 20, going into Surroopdee Nugger village that evening with bundles, &c. and No. 6, further states, that these men went into prisoner No. 9's house; and that that same day about noon he had gone into prisoner No. 9's house (they are ryots of the same zemindar Chunder Nauth Dey) to get together some men for his master to take with him to see the *dusserah* spectacle, and that then he had seen ten or twelve men collected, amongst whom were prisoners Nos. 17, 18, 19 and 20.\*

Prisoners Nos. 10, 11, 13 and 14, confessed both in the mofussil and before the Magistrate to having gone with the rest to commit the dacoity, and to having remained outside while the others went in and to having received plundered property, except No. 11, who says he heard that plundered property was found in his house.

Nos. 8 and 21, confessed to knowingly receiving plundered property, and Nos. 9, 15 and 16, confessed to privacy. No. 12, confessed in the mofussil, but retracted his confession before the Magistrate. No. 8, was apprehended with various articles of the stolen property upon him by witness No. 7, Buxoo Chowkeedar, who showed great zeal and intelligence in the manner in which he apprehended the prisoner, and I am glad to see that he has been rewarded with a burkundazship.

From and from about the houses of Nos. 9, 10, 11, 12, 13, 14 and 21, various articles of the plundered property were recovered, all of which are of an identifiable nature, and have been identified by prosecutor and his witnesses. Amongst the plundered articles, I may mention a peculiarly shaped copper plate called a *tāt* तट used by the Hindoos in the *poojah*, and of course never seen in a Mussulman's house. This was brought out by prisoner No. 10.

The only proof against Nos. 17, 18, 19 and 20, was their recognition by three witnesses as they were leaving the house after committing the dacoity, and by two more as they were entering the village of Surroopdee Nugger shortly after where most of them live. This evidence is supported by the confessions of Nos. 8, 9, 10, 11, 13, 14, 15 and 16, and as against No. 17, I see no cause to distrust it, as against Nos. 18, 19 and 20, however I do not think it would be safe to rely upon it, as these three prisoners were not mentioned *by name* to the darogah by any of the eye-witnesses except No. 5; the rest pointed them out *on seeing them* as having recognised them along with the rest.

All the confessing prisoners denied their confessions before me, and most of them pleaded ill-will against them on the part of prosecutor on account of civil suits. None of the witnesses for the defence deposed to any fact in prisoner's favor, but on the contrary disclaimed all knowledge of the points on which they were called to give evidence.

All the confessing prisoners agreed in naming No. 17, Ashker as the planner and leader in the dacoity. He has already been imprisoned for 5 years for dacoity.

I convict Nos. 8 to 14, of dacoity and knowingly receiving plundered property, Nos. 15, 16 and 17, of dacoity, No. 21, of knowingly receiving plundered property and sentence them as follows.

Nos. 8 to 16, seven (7) years' imprisonment with labor in irons. No. 17, who has been previously convicted of the same offence, and who, there can be no doubt, was the leader in this case, to fourteen (14) years' imprisonment with labor in irons in banishment, and No. 21, to four years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—Present: (Messrs. G. Loch and H. V. Bayley.) The dacoity charged is stated to have taken place on the 9th of October, about 4 or 5 p. m. The prosecutor learnt the fact that evening while witnessing the *dusserah* ceremonials at another village. He proceeded at once that night to give information to the darogah, and at the same time gave in a list of the major part of the property plundered.

The darogah's investigation upon the spot *next day*, shews that four boxes had been broken open on the premises of the prosecutor, the contents of the boxes taken away, and three or four *lattees* and a pointed bamboo were lying about.

The prosecutor had stated in his first information that he suspected some of the prisoners, viz. Nos. 5, 8, 9, 10, 11, 12, 13, 14, 15 and 17, because the dacoits had been seen to go in the direction of mouza Sherfoodeen Nuggur, the residence of most of those prisoners. The prosecutor did not state at that time that he had received information of any of the dacoits having

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Case of  
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been recognized on the occasion of the dacoity, but he added that it would hereafter appear who had been recognized.

The witnesses Nos. 1, 2, 3, 4, 5 and 6 depose for the first time to the police on the 23rd of October, and on subsequent dates to the recognition of the prisoners. As the apprehension of most of the prisoners and the finding of the property had taken place between the 10th and the 23rd, we cannot place confidence on the evidence of these witnesses.

We think, however, that the confessions, before the police, and the Deputy Magistrate, and the finding of the property with the prisoners, and on their premises, or with parties indicated in their confessions, and its clear identification as prosecutor's are sufficient to warrant a conviction against prisoners, Nos. 8, 9, 10, 11, 12, 13, 14, 15 and 21.

The property was, in the case of these nine prisoners, found on the next day buried and otherwise concealed. The prisoners in their appeals urge that this was the result of collusion between the prosecutor and police. But there was neither time nor opportunity, with reference to the different spots in which the items were discovered, for such collusion in the short interval between the dacoity, the arrival of the darogah, and the discovery of the property. That property is duly identified as prosecutor's, and that fact is not questioned by the appellants. They also urge that as prosecutor had suits with some of them, and enmity with others for not giving evidence for him in cases in Court, he has brought this false charge. But this plea, if true, cannot refute the violent presumption founded on the discovery of the property, under the circumstances above-mentioned. Indeed the enmity admitted may have induced the dacoity, inasmuch as, in ordinary circumstances, accounts and papers would not have been carried off, as they were in this case.

The confessions before the police of the above prisoners were recorded immediately after the discovery of the property; and in all instances, except of prisoner No. 12, the confessions before the police, were repeated before the Deputy Magistrate. They are duly attested as voluntarily given, and are the more to be relied upon as not improbable after the confession of one had led to the finding of the property, and the implication of the others. It is pleaded at the Sessions and in the appeal here, that the darogah threatened ill-treatment to the female relatives of the prisoners, if they did not repeat their police confessions, to the Deputy Magistrate. But this plea might have been at the time urged before the Deputy Magistrate; for, being on the spot, he could have at once prevented the threat being carried out.

The above prisoners do not substantiate their defence of *alibi*, or that they did not participate in the dacoity charged.

The plea of some of the appellants, that a dacoity would not be committed in the day-time is in this instance of little avail, for it is shewn that the occasion of the *dusserah* ceremonial had induced all the male residents to leave the village, and that only two women were in the house. The day-time under such circumstances afforded an opportunity for a dacoity of the nature of this.

We thus see no reason to interfere in regard to the appeal of prisoners Nos. 8, 9, 10, 11, 12, 13, 14, 15 and 21.

In regard to prisoners Nos. 16 and 17, the former of whom confessed to privity, while the latter did not confess at all, we observe that the one was not apprehended till the 4th, and the other till the 6th of November. No sufficient reason whatever is given for this; and the mere vague statement that the police acted on information only then received, is futile. These prisoners lived within one hour's distance of the prosecutor. Their apprehension after so many days, without direct independent proof, in the interval, of their guilt, (their being mentioned by the other confessing prisoners not being in our opinion sufficient alone to overweigh this objection,) or of there not being at their houses in that interval (which the record shews they were) is a circumstance of so suspicious a nature that we do not think the conviction of these prisoners can stand; and we direct their release.

The Deputy Magistrate should have noted in the Calendar what witnesses he had examined.

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Case of  
SHEIKH  
HOOKOOM-  
CHAND  
and others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Midnapore.

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GOVERNMENT

*versus*

RAJUN MALLEET (No. 13,) RAM MAHITTEE (No. 14,) RATTUN GEEREE (No. 15,) AND NARAIN DOL-LAYEE (No. 16.)

CRIME CHARGED.—Dacoity and having belonged to a gang of dacoits.

Committing Officer.—Captain C. H. Keighly, Assistant General Superintendent and Joint-Magistrate, Midnapore.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Midnapore, on the 2nd March, 1857.

Remarks by the *Additional Sessions Judge*.—The prisoners are committed to take their trial by Captain Keighly, Assistant

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Case of  
RAJUN  
MALLEET  
and others.

Prisoner convicted. Remarks as to previous acquittals as to reference to other records; and as to Certificates in respect to integrity of confessions.



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and others.

General Superintendent for suppression of dacoity, charged with having been engaged in several dacoities and also with having belonged to a gang of dacoits. From the evidence produced the charges against the several prisoners are clearly proved.

With regard to the complicity of the four prisoners in the dacoity laid against them in the 1st count, the evidence only rests on the depositions of witnesses Nos. 1 and 2, (approvers.) That the dacoity did take place, there can be no doubt, as appears from *nuthee* No. 2, and as the approvers' statements are so well supported in the other counts by most satisfactory corroborative evidence, there is no reason to doubt their statements in this.

The 2nd count is clearly proved against the prisoners Nos. 13, 14 and 16, by the evidence of the witnesses Nos. 1 and 2, and the corroborative evidence in *nuthee* No. 35, where, long before the apprehension of the prisoners, we find Purnu Patthar, who was originally apprehended in the dacoity and whose statement is attested by witnesses Nos. 5 and 6, stating that witnesses Nos. 1 and 2, and prisoners Nos. 13 and 16, were parties in the dacoity, and we find Narain Jana (witness No. 1,) on the 1st of September, 1854, mentioning prisoners Nos. 13 and 14, and witness No. 2, as being parties engaged in the dacoity. These statements having been made so long before the apprehension of the parties, can leave no doubt in any one's mind as to the genuineness of the present statements.

The 3rd count is established very satisfactorily against prisoners, Nos. 14 and 15; No. 14, being now denounced by witnesses, Nos. 1 and 3, and No. 15, by witness No. 1, corroborated by their being mentioned in the mofussil confessions of Narain Jana and Baim Mallee on the 7th of June, 1855, and of Daveechurn on the 8th of June, 1855, and again before the Magistrate on the 9th and 11th of the same June, respectively. At this time there could have been no collusion between the above parties nor was there any cause for falsely accusing them, and they were also mentioned in Narain Dollayee's (prisoner No. 16's) statement which he gave in the mofussil at the time as shewn in the abovementioned *nuthee*.

The prisoners plead "*not guilty*," but only call witnesses to character, who do not shake the evidence as to the dacoities in the least, in fact a good deal of this evidence rather goes against the prisoners.

Therefore by the evidence of the witnesses (approvers) in so far as against Nos. 13, 14, 15 and 16, in the 1st count, as against Nos. 13, 14 and 16 in the 2nd count, as against Nos. 14 and 15 in the 3rd count, fully corroborated by the records of the cases submitted and by the confessions of parties apprehended at the time at which the dacoities were committed, I consider the several charges of dacoities as stated above fully established against the prisoners and also to their having belonged to a

gang of dacoits, I therefore recommend that they be imprisoned in transportation beyond sea for life with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court observe from the record that the prisoners Nos. 13 and 16, have been heretofore acquitted of the dacoity charged in the 3rd count, which has not now been charged against them. The Sessions Judge should have more specifically noticed this in his letter of reference.

The testimony of the approver witnesses is well corroborated on the 2nd and 3rd counts, by independent evidence.

The prisoners Nos. 13 and 14, plead the enmity of witness No. 1, but in no way prove it. The four prisoners call witnesses to character. Those called by prisoners, Nos. 13 and 15, state that prisoners live by cultivation and salt manufacture; those called by prisoners Nos. 14 and 16, do not give them a good character.

We consider the 2nd count fully proved against prisoners Nos. 13, 14 and 16; and the 3rd count, against prisoners Nos. 14 and 15, and the general charge against all the prisoners. We sentence them to be transported for life beyond seas under Act XXIV. of 1843.

The Additional Sessions Judge, should, in referring to the records of cases submitted in corroboration of charges made, note in the margin of his letter, the page of the record bearing upon any particular remarks, made by him, as well as the No. of the record. He should also mark on the Calendar the names of those witnesses whom he may examine according to Circular Order 25th October, 1844. (Page 381 of Carrau's Edition.)

The Commissioner for the suppression of dacoity should cause the adoption of some uniform plan in the offices subordinate to him to secure the noting of the pages of the records referred to in the abstract of information of the committing officer, as proving any specific point; in fact should cause the system he himself pursues in this respect to be adopted by his subordinates. The defect adverted to appears in the abstract in this case. There should also be *always* subjoined to each calendar, certificates that proper precautions have been taken to prevent approver-witnesses having access to, or means of information in connection with antecedent records of dacoities, in regard to which they may depose, and generally as to the means taken to prevent collusion of approver-witnesses in each case.

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May 5.

Case of  
RAJUN  
MALLEET  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND JEWON GOALAH

*versus*

SOODUN (No. 1,) LEKHEE (No. 2,) BOODHUN (No. 3,) BODAH (No. 4,) AND BHAGEERUT (No. 5.)

Behar.

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CRIME CHARGED.—Dacoity in the house of Jewon Goalah and plunder of property valued at Rs. 113-5-6.

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CRIME ESTABLISHED.—Committing robbery by open violence and in a gang, designated dacoity, and of plunder of property in the house of the prosecutor, valued at Rs. 113-5-6.

Case of  
SOODUN  
and others.

Committing Officer.—Mr. H. Davis, Officiating Deputy Magistrate of Sherghotty.

Prisoners acquitted; the evidence being insufficient.

Tried before Mr. T. C. Trotter, Officiating Sessions Judge of Behar, on the 9th March, 1857.

Remarks on the proceedings of the Sessions Judge and Magistrate.

*Remarks by the Officiating Sessions Judge.*—These prisoners were made over for trial on the charge of having committed a dacoity in the house of Jewon Goalah, and plundered property valued at Rs. 113-5-6.

The prosecutor states that on the 22nd of Poos at about ten o'clock, on Friday night, a number of dacoits amounting to about thirty men, who were armed with *lobundahs*, *latties* and bamboos came to his house, and having opened the door, by lifting it off its hinges, forcibly entered, and carried off all his property, in value about 113 Rs.; that he immediately called out "*dakha, dakha*," on which he was joined by Dassuin chowkeedar, Munohur Goalah, Subhuram and Meghan; that the light being a clear moon-light he was enabled by that means, and the aid of three *mussals*, which the dacoits carried, to recognize the five defendants, who live at a distance of about four *coss*, and who were previously known, in consequence of the prosecutor's cattle being frequently grazed near to their village; that he saw Soodhun with a *lobunda* and *mussal* in his hand, and that he also had a *chipi*; that Lekhee had a bundle of clothes, and not only he, but the witnesses before named, though they could not oppose the dacoits, followed them, at a distance of one *russee* for a quarter of a *coss* to mouzah Dorgy, where they were challenged by Dusrut and Sheobux, who having been brought into collision with the dacoits, beat Bhageerut No. 5. That the people of that village coming to their aid the dacoits fled, carrying off the property of which none has been found, nor searched for, as it was not probable they would conceal it in their houses.

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Case of  
SOODUN  
and others.

The witness No. 1, Dussuin chowkeedar, makes almost the

Witness No. 1, Dussuin chow-  
keedar.

same statement as that which has been rendered by the prosecutor. He says that he recognized the five defendants, and considered the band to be a band of dacoits, from their calling out "*ullee, ullee,*" and having *mussals* in their hands; that such *mussals* were carried by Soodhun, Bodha and Lekhee, the first of whom also had a *lobunda*, and a *chipy*; that Lekhee, Boodhun, Bodha, and Bhageerut were likewise armed, and also had part of the property in their possession and that, as stated by the prosecutor, he followed the dacoits to Dorgy Beiton where Dusrut beat Bhageerut with a *lobunda*; that the moonlight, the *mussals*, and former acquaintance with the defendants enabled him to recognize them.

The evidence of No. 2, Munohur, confirms in all respects

Witness No. 2, Munohur Goa-  
lah.

what has been asserted by the plaintiff. This witness deposes that he ran, with Subhuran and Meghun to the spot on hearing the cry of "*dakha, dakha*" which had been raised by Jewon and Dassuin chowkeedar; that he clearly recognized the five defendants, one of whom Soodhun, had a *lobunda* and *chipy* in his hand, while Lekhee had a *mussal*, and that the others, who were all armed, ran away with the *mussals* lighted, and were followed to Dorgy Beiton, where he saw Dusrut strike the defendant Bhageerut.

The witnesses Nos. 3 and 4, or Sobrun and Meghun, do not

Witness No. 3, Sobrun Goalah.

" " 4, Meghun Goalah.

vary in their statements from those which have preceded, describing the number of dacoits at about thirty men, all of whom were armed, three of whom had *mussals* and seven of whom are stated to have remained outside the house, while the others plundered it. These men affirm that they had no difficulty in recognizing the five defendants, by the clear moonlight, and the light thrown around from the *mussals*, and from the circumstances of their being formerly known to them when they came to graze their cattle in mouzah Berowy; that they followed the dacoits, at a distance of about three *russees*, to Dorgy Beiton, having no power to cope with them, and that one of the prisoners was then struck by Dusrut, though the witness No. 4, cannot remember his name; that they saw Lekhee and Soodhun decamp with part of the plundered property which was enclosed in a bundle and that the dacoits had in no way changed their "*shukul*" or appearance.

The witness No. 5, Meer Mahomed the native doctor, attached

Witness No. 5, Meer Mahomed,  
native doctor.

to the out part of Sherghotty deposes that on examining Bhageerut, prisoner No. 5, he found

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Soodhun  
and others.

on his chest a sharp wound, and also one on his left arm, both of which appeared to have been inflicted by the point of a *Jobunda*.

The witness No. 6, Dusrut, asserts that a little after 10 on

Witness No. 6, Dusrut.

Friday at night, when about seven days of Poos only remain-

ed, he was at his *beitan* with Sheobux tending his cattle, when about thirty dacoits, all of whom were armed approached; that on his challenging them, Soodhun and Boodhun and Bhageerut struck him, on which he struck Bhageerut twice; that he was enabled to recognize the five defendants present by the moonlight, as all of them were formerly known to him, and that he saw all the witnesses who followed in the wake of the dacoits shouting.

The statement of witness No. 7, Sheobux, is very much the same as that which has gone before, and it confirms the beating

Witness No. 7, Sheobux.

of Bhageerut, by Dusrut, on his

being attacked in his *beitan*, as well as the presence of the witnesses and plaintiff from Kurma, who were making a loud noise, and consequently gave the first intimation of the approach of the dacoits, five of whom were recognized by the moonlight, and from having been previously known.

The witnesses Nos. 8, 9 and 10 or Sobha, Oodhee and Mun-

Witness No. 8, Sobha Goalah.

" " 9, Oodhee Goalah.

" " 10, Munghoo Goalah.

ghoo depose that they were roused from their sleep, by the cry of *dakha*, which proceeded from the *beitan* of Sheobux

and Dusrut; that on running to the spot distant about four bamboos they recognized Soodhun, Lekhee and Bhageerut, the last of whom was beat by Dusrut; that they recognized these men who were in the rear of the other dacoits by the moonlight, but the others they could not identify; that these three defendants were formerly known to them, and had twice been concerned in cases of theft.

The defendants deny their guilt. Nos. 1, 2, 3 and 4, state that they were absent in their *kallyhans* at mouzah Dangeia, while No. 5, or Bhageerut pleads that he was sick, but he does not say where, and affirms that the wounds were the result of sickness. The prisoner No. 1, also pleads that the facts sworn to by plaintiff and his witnesses of their having unchanged appearances, *latties* in their hands and of their having carried off *lotas*, and such like brass vessels will prove that they were not dacoits.

The witnesses Nos. 11 and 12, of the calendar, or Dusrut and

Witness No. 11, Dusrut Goalah.

" " 12, Benuck Dosad.

Benuck, the defendants refused to hear, as they said they had been tampered with by the plain-

tiff; but it is worthy of note that in the Magistrate's Court, when their evidence was taken they stated they "knew nothing."

The witnesses Nos. 14, 16, 17, 18 and 21, state that the defendants are respectable men having a share in the *ticca* of Dangeia; but there is a discrepancy in such testimony, Shobhany, who is about sixteen years of age and who gave his

evidence, as if he had been tutored, having deposed that Soodhun is a chowkeedar, and Bhoodhun the holder of a 5½-anna share in the village aforesaid, whereas Lalljee says that such *ticca* is in Soodhun's name. They also affirm that Bhageerut had a wound in Augun from which he was suffering.

The prisoners having been committed to take their trial on the charge of dacoity, this case was disposed of without the aid of the law officer. Though the witnesses for the defence do their utmost to prove that the defendants are all men of respectability, yet this plea falls to the ground, I conceive, when it is recorded, vide report of 3rd February, 1857, that Bodha, in the case of theft of Imam Buksh's property was punished with twenty *bets*, the marks of which are even now quite discernible, and again when it is shewn by the report of 12th February, 1857, that Boodhun, Soodhun and Bhageerut had all been proved to be bad characters and were so *challaned*. The question for determination seems to be simply this, whether in the absence of the discovery of any of the property, the prisoners committed the theft, and could be recognized from the moonlight, the burning of the *mussals*, and the fact of former acquaintance. Though I am well aware that professional dacoits do not commit dacoities near their own houses, or without an altered appearance, still these men are not of the race of dacoits referred to in Act XXIV. of 1843. They are one and all of the *gwala* caste, and there appears to me nothing strange therefore, in their having committed the theft as they are said to have done, or by violence, or in their recognition, for with an unchanged appearance, the light afforded would be sufficient for all such purposes, or to their being pronounced dacoits from their being provided with *mussals*. Considering the weight of the testimony given by those who were present at the attack, the subsequent collision, which is credibly told, and the evidence of the native doctor, which goes to shew that the wounds received by Bhageerut were from a *lobunda*, and not the result of sickness, I have no hesitation in convicting all five of the charge of committing robbery by open violence, and in a gang, designated dacoity, and of plundering property in the house of the prosecutor valued at rupees 113-5-6, and have sentenced them each

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Witness No. 14, Panchoo Goalah.  
" " 16, Methoo Chamar.  
" " 17, Benuck Goalah.  
" " 18, Seedhanee Goalah.  
" " 21, Lalljee Goalah.

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to imprisonment for seven years, with labor and irons in banishment.

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SOODHUN  
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*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal generally on the record. This dacoity is stated to have occurred about ten P. M. on the 2nd of January. The first information reached the thannah, a distance of twenty-four miles, on the 5th. None of the property plundered was recovered or found; but one torch and a pair of shoes were left by the dacoits.

The question of the guilt or innocence of the prisoners depends upon the weight to be given to the testimony of two classes of witnesses for the prosecution; i. e. firstly, witnesses Nos. 1, 2, 3 and 4, who depose to the recognition of the prisoners *at the prosecutor's*; secondly, witnesses, Nos. 6, 7, 8, 9 and 10, who recognized the prisoners when they were challenged, and attempted to be stopped *after* having left prosecutor's, viz. *near the village of Dirkee.*

The evidence of both classes of witnesses has to be considered in two ways; i. e. as to the consistency of the statements of the same persons in different Courts in respect to the recognition, and as to the agreement of the statements of the witnesses, one with another, on this, and other material points.

Now as to witnesses Nos. 1, 2, 3 and 4. The main point, the recognition of the prisoners, is thus variously stated by the same persons in different Courts. Prosecutor states on the 5th January to the police on oath that Monohur, witness No. 2, had recognized prisoners Nos. 1 and 2. And although witnesses Nos. 1, 2, 3 and 4, had all been with prosecutor, the latter did not mention any other prisoners as then recognized by him, or by the other witnesses Nos. 1 to 4. In the foudary and sessions, prosecutor deposes that he himself at the dacoity recognized prisoners Nos. 1 to 5. Witness No. 1, stated to the police that Monohur witness No. 2, had recognized prisoners Nos. 1 and 2, but no other persons were mentioned as recognized. In the foudary and sessions the witness No. 1, mentions having recognized prisoners Nos. 1 to 5, at the dacoity. Witnesses Nos. 2, 3 and 4, at the police named only prisoner Nos. 1 and 2, and at the foudary and Sessions Courts *all five* prisoners. All the witnesses state that they recognized the prisoners as neighbouring graziers; that they did so by the torches and moon; that there was no disguise: yet none named any but Nos. 1 and 2, to the police.

The prosecutor and the above witnesses differ in the following material points. The prosecutor and witnesses Nos. 1 and 3, state that the dacoits had only *lohabundas* and *lathies*; witness No. 2, says to the police and Magistrate that some of the dacoits had *guns*; and witness No. 4 the same, both to the Magistrate and Sessions Judge. The prosecutor states to the

Sessions Judge that the dacoits threw away the torches, and he recognised them by moonlight. The witness No. 2, states to the Magistrate, that he recognised the prisoners by the torches, and that they did *not* throw them away till outside the village. Witness No. 3, says he knew the prisoners by the moonlight, and No. 4, that he knew them by the torch-light. Witness No. 1, mentions at the Sessions each parcel of plunder taken by each prisoner, and he recognised even the shoes left behind as those of prisoner No. 1. This witness did *not mention* this to the police, or the Magistrate; nor do the prosecutor or other witnesses, who all depose to having been together and present at the same time and distance, mention these matters.

To proceed to the evidence of witnesses Nos. 5, 6, 7, 8, 9 and 10. It is possible that though the previous witnesses depose to having seen what it cannot, for the reasons above given, be believed they did see, the other witnesses, in a separate village, did really recognize the prisoners. Applying the same test to their evidence as to that of witnesses Nos. 1 to 4, we find that witnesses Nos. 6 and 7, who were watching their cattle, only named prisoners Nos. 1 and 2, at the police; and neither named the prisoner whom they depose to have been wounded by No. 7, when these witnesses came into collision with them. In the foudary and Sessions these witnesses name all five prisoners. They depose that they had long been acquainted with them, and so knew them. If so, they would have at once named them to the police, if they really had recognised them. The police depositions of these witnesses are word for word the same. The date seems to have been at first the 8th, and made afterwards the 7th; and the alteration of Sheobux's name in his deposition, and the mistake in Dusrut's using his own name needlessly in speaking of himself, rather indicate that the names have been fitted into the depositions afterwards. These witnesses Nos. 6 and 7, were together. Witness No. 6, states that he was able to recognize the prisoners, who had *no torches*, by the moonlight; No. 7, that they had *three torches*. These witnesses further depose that the witnesses Nos. 8, 9 and 10, who subsequently came up from their village stood at a distance from fright. No questions seem to have been asked as to what that distance was. The witnesses Nos. 8, 9 and 10, state to the police that they recognised all five prisoners. But these witnesses state to the Magistrate that they recognized prisoners, Nos. 1 and 2, and to the Sessions Judge Nos. 1, 2 and 5. The contradictions are, in our opinion, sufficient to invalidate the testimony of these witnesses.

It is true that the native doctor states that that Blugeerut prisoner No. 5, had a wound in his chest and forearm, which might have been made by a *lohabunda*, but no questions were asked as to whether they could be the result of natural or acci-

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Under all these circumstances, we do not think the evidence for the prosecution trustworthy or satisfactory, so as to warrant a conviction; and we direct the release of all the prisoners.

We regret to be obliged to add that the investigation of the case by the Magistrate and the Sessions Judge appears to us to have been insufficiently and negligently conducted; especially as no reference appears to have been made by these officers to the police investigation, and no attention has been paid to the gross contradictions of the prosecutor and his witnesses in their statements at the thannah, compared with the depositions given by them before the Magistrate and Sessions Judge.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

Beerbhoom. SHUNKERDYAL SINGH (No. 1.) RAMJEEBUN PALL  
(No. 4.) AND ISHUR BANERJEA (No. 5.)

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Case of  
SHUNKER-  
DYAL SINGH  
and others.

CRIME CHARGED.—1st count, affray attended with the murder of Kader Bux Burkundaz; 2nd count, plunder attended with the murder of the above.

CRIME ESTABLISHED.—Convicted of being concerned in an affray with plunder and homicide.

Committing Officer.—Mr. R. J. Wigram, Officiating Magistrate of Beerbhoom.

Appeal re-  
jected. Re-  
marks on pro-  
ceedings and  
sentence of  
Sessions Judge  
and Magis-  
trate.

Tried before Mr. O. W. Malet, Sessions Judge of Beerbhoom, on the 2nd December, 1856.

*Remarks by the Sessions Judge.*—There had for some time been a dispute between two rival zemindars, Dripomyee and her son, Dhun Baboo on the one part and Shibdyal on the other, as to the ownership of the village of Kendeah. At the instance of the gomastah of Dripomyee two burkundazes were sent out on the 19th Assar, corresponding with 1st July with orders to see that no breach of the peace occurred.

On the 12th Srabun, corresponding with 26th July, these men heard that some of Shibdyal's men were expected, and that it was likely there would be an affray between them and some of Dripomyee's people, who were already located in the place, information was sent to the thannah on that day.

The next morning 13th Srabun, corresponding with 27th

July, twenty or twenty-five men of Shibdya's party came out of the house of one Rampershad Pall, and some ten or twelve out of the house of one Khetoo Pall, they drew up on opposite sides and began to abuse each other, one of Shibdya's party brandishing his sword by which one of Dripomyee's people was slightly wounded. The police, however, including Warris Ally, witness No. 1, Kader Bux, deceased, and defendants Nos. 3, 6 and 8, and Shibgolam, defendant No. 2, one of Shibdya's men induced the two parties to break off without coming to blows, and the two retreated to their respective quarters.

About two or three hours after this, Shibdya himself, whose house is only about four miles distance, came up attended by a large number of men, and it seems immediately gave his men order to attack the house of Khetoo Pall, where Dripomyee's men had taken refuge. This was done, the door was broken open. What became of Dripomyee's men does not appear, but one of Shibdya's men, defendant No. 1, was wounded, the house was plundered. Shibdya then gave order to beat the police, who had in vain attempted to stop his proceedings. They, it appears, fled without much resistance, one of the burkundazes was felled by a blow on the head from the effects of which he died, and several others of the houses in the village were plundered.

The police jemadar came from the thannah after the business was over. He says that he apprehended defendants Nos. 1, 2, 5 and others of the other party.

In the afternoon of the same day, the darogah came, he made the usual enquiries, and sent in fourteen men as defendants, including the men tried by me, another man was apprehended by the nazir of the foudary Court and another by a burkundaz, in all sixteen men.

The Magistrate himself went to the spot, and in his calendar testifies to the state of "devastation" in which he found the village.

The unfortunate man who was killed was speechless from the time of the blow that he received on the 27th July, till he died about six hours after his admission into hospital on the 28th, and his deposition therefore could not be taken.

As regards No. 1, he allows that he was one of the party; a severe wound on his arm shews that he was actually engaged. He is spoken to by witnesses Nos. 7 and 10. He himself says that he endeavoured to stop the affray, but he has no evidence to support this.

Prisoner No. 4, is said to have been engaged by several witnesses both in the beating and plundering; the latter is corroborated by the evidence of witness No. 1, who saw him with the plunderers. His defence is that his name was put down through enmity, which I do not believe.

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and others.

No. 5, is clearly spoken to by several of the witnesses as being on Shibdyal's side, and giving orders as one in authority, and though there are some doubts and discrepancies regarding them, I think the evidence is strong against him. He tried to shew that he came up after the affray was over.

I tried this case with the assistance of a jury, who found all the prisoners guilty as charged and according to the tenor of the evidence they were right, I have my doubts on the whole of it, with the exception of that of Warris Ally Burkundaz. But taking all the circumstances of the case into consideration, I convict Nos. 1 and 5, of being concerned in an affray with plunder and homicide, and sentence them to seven years each with labor and No. 4, to five years' imprisonment with labor.

It was unfortunate that the Magistrate had not on his first hearing of the quarrel brought the case under Act IV. of 1840.

The police darogah and jemadar especially appear to have behaved ill, the two burkundazes, who were sent to prevent the riot, behaved well, and the Magistrate has given the vacancy to the son of the burkundaz who was killed, I should otherwise have recommended something to have been given to his family.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Counsel for the prisoners advances three pleas in appeal. 1st. That the evidence of the witnesses for the prosecution is contradictory. 2nd. That if this evidence be insufficient to convict some of the prisoners under trial, it is insufficient for all; and cites Nizamut Adawlut Reports of 1856, page 662, part I., in the case of Gondoo Lohar. 3rd. That admitting the evidence to be worthy of credit, it is not proved that the appellants took any active part in the riot, and, therefore, the sentence awarded is too severe. The Counsel refers to Nizamut Adawlut Reports page 178, of part I. of 1856. And he further observed that the Sessions Judge considers the evidence for the prosecution, except that of Warris Ally, witness No. 1, open to doubt. The Counsel then proceeded to remark on certain contradictions in Warris Ally's testimony, as given before the Darogah, Magistrate and Sessions Judge, and as compared with that given by other witnesses. As regards the 2nd plea, the Counsel remarks that Shibgolam Singh, prisoner No. 2, is stated by the witness, Warris Ally, to have entered the house of Khetoo Pall, and, as in the case of the appellant, Shunkerdyal, to have come out without taking any property: yet the Sessions Judge has released Shibgolam and convicted the appellant. The point urged in the 3rd plea is stated to be proved by the evidence for the prosecution.

We observe that nine individuals were committed for trial in this case, of whom the Sessions Judge has acquitted six, and convicted the three appellants. We have carefully perused the record, and are unable to find any sufficient reason for discredit-

ing the evidence for the prosecution in the general manner done by the Sessions Judge, who, it may be observed, gives no specific reasons for his doubting it. There may be minor discrepancies and contradictions, but the *material facts* are clearly deposed to, and the parties concerned clearly identified, both before the Magistrate and Sessions Judge. The prisoners Nos. 3, 6 and 8, were acquitted, because the Sessions Judge considered they were present assisting the burkundazes, while prisoners Nos. 7 and 9, against whom the evidence is not very strong, were acquitted, because the Sessions Judge considered the evidence for their defence preferable to that for the prosecution. Notwithstanding the acquittal of these prisoners, we do not think the evidence for the prosecution is to be rejected *in toto*, because the Sessions Judge has rejected it, as regards certain prisoners, on what appears to us insufficient grounds. The contradictions in the evidence, pointed out by the Counsel for the appellants, are immaterial. The evidence sufficiently proves that Ishur Banerjea, prisoner No. 5, though not engaged in plundering property with his own hands, was present directing the proceedings of the rioters; that the prisoner Ramjeebun, No. 4, was actively engaged in the riot, and that Shunkerdyal was present, though when and how he received the sword-cut on his arm, is not apparent. We reject the appeal. We think it proper to state that the sentence passed on the prisoners is not, in our opinion, commensurate with the crime of which they have been convicted. From the record, it appears that the dispute for the Kundyia village is of some standing, and the Sessions Judge remarks that "it was unfortunate the Magistrate had not on his first hearing of the quarrel brought the case under Act IV. 1840." The Sessions Judge will require the Magistrate to report why this course was not followed, and why the parties were not bound down to keep the peace under Act V. of 1848. He will submit the report to this Court with any remarks he may have to offer.

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Case of  
SHUNKER-  
DYAL SINGH  
and others.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Midnapore.

RUGGHOO DOLLYE.

1857.

CRIME CHARGED.—Dacoity and having belonged to a gang of dacoits.

May 8.

Case of  
RUGGHOO  
DOLLYE.

Committing Officer.—Captain C. H. Keighly, Assistant General Superintendent and Joint-Magistrate, Midnapore.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Midnapore, on the 2nd March, 1857.

Prisoner convicted and sentenced under Act XXIV. of 1843. Remarks on manner of submitting corroborative records.

*Remarks by the Additional Sessions Judge.*—The prisoner is charged on his own confession to having committed the two dacoities mentioned in the calendar and to his being a professional dacoit.

He confesses, in all, to thirteen dacoities but as above stated he is sent up to trial only on two.

The charge in count No. 1, viz. dacoity in the house of Bydeenath Ghose is established against the prisoner by his own voluntary confession, which is attested by the witnesses to the confession (Nos. 2 and 3,) and by the evidence of witness No. 1.

That the dacoity did take place is shewn by the corroborative evidence, *nuthee* No. 390.

The charge in count No. 2, dacoity in the house of Pershad Bhoonya, is established against the prisoner by his own voluntary confession, which is attested by the witnesses to the confession. That the dacoity did take place as shewn by *nuthee* No. 482.

That the prisoner committed the above two dacoities there can be no doubt and considering the number of cases he has confessed to, which confessions I have seen, and are with the *nuthee* of this case, I convict him of the two dacoities charged in the calendar in counts Nos. 1 and 2, and to his having belonged to a gang of dacoits, count No. 3, and therefore recommend that he be imprisoned in transportation beyond sea for life with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley ) The charges, on which the prisoner has been convicted by the Sessions Judge are fully proved by his own voluntary confession, corroborated, as regards the first count, by the evidence of the approver Musst. Peary, whose confession was taken in 1855, previous to the apprehen-

sion of the prisoner. The Court convict the prisoner on all the charges, and sentence him to be imprisoned for life, with labor and irons in transportation beyond sea.

The Court request that the Assistant Commissioner for the suppression of dacoity be instructed to send in future, in addition to the copies of the darogah's first and final reports, copies of the *first deposition made to the police by the party robbed*, and of any papers, which may tend to corroborate the statements made by the approver-witnesses. For instance in the Morakatty case, the witness, Peary, deposes that two of the people of the house were wounded. This fact is not found in the report; but it may be recorded in some other paper. In the Dhankally case the prisoner states that Peary burnt the leg of the prosecutor's wife with a torch. In short *the statement of deponents*, as well as the *reports* of the police, should be sent, and where there is any paper with the record which sets forth such facts as the above, a copy of it should be sent.

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Case of  
BUGGHOO  
DOLLYE.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND OTHERS

*versus*

RAMCHURN COORMEE (No 1,) DOONDAH SINGH  
RAJPOOT (No. 2,) AND ISHUR SINGH (No. 3.)

Behar.

CRIME CHARGED.—1st count, No. 2, wilful murder of Bundhoo Cahhar deceased; 2nd count, being an accomplice in riot attended with the wilful murder of Bundhoo Cahhar deceased. Nos. 1, and 3, 1st count, being accomplices in a riot attended with the wilful murder of Bundhoo Cahhar deceased; 2nd count, being accomplice in a riot attended with the wounding of Bundhoo Cahhar, Nuukoo Singh and Hurgceanee Singh and in consequence of the severe wound sustained in the said riot, Bundhoo Cahhar died fourteen days after.

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Case of  
RAMCHURN  
COORMEE  
and others.

Committing Officer.—Mr. H. Davies, Officiating Deputy Magistrate of Shergotty.

Tried before Mr. T. C. Trotter, Officiating Sessions Judge of Behar, on the 25th March, 1857.

*Remarks by the Officiating Sessions Judge.*—It is a supplemental trial, and it appears unnecessary to quote therefore all that has been already placed before the Court, and which will be

Prisoners  
convicted.  
Sentenced capitally. Reference to prevalence of use of deadly weapons in cases of this nature.

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found duly recorded at page 83 in the Cases of the Nizamut Adawlut for July, 1854, and again at page 93 of those for January, 1855.

That portion however the prosecutor's deposition and deceased's evidence detailed by my predecessor, and which states the occurrence, is here given entire

"Midday of the 29th January last, the two Rajpoot prosecutors, together with the deceased their servant and a few ryots were in their *kuchra*, threshing-floor, where about one thousand maunds of grain their private property lay ready stored. The accused hold lands largely and are influential people of the neighbourhood. The threshing-floor was suddenly attacked by a large body of armed men headed by Futtehnarain (absconded) Beshoodharee's own brother, and who figured in the disputes of 1255, F. accompanied by the prisoners, and others absconded, when the rioters commencing to carry off the grain the deceased was in the act of pushing one of the rioters' baskets aside, when on Futtehnarain's order Doondah, Beshoodharee's son, cut him down with a sword. Nunkoo Singh prosecutor received a blow on his head struck with an iron bound club by Purbhoo Singh prisoner No. 1, and Hurgceanee Singh prosecutor, who had a stick in his hand, warded off a sword-blow aimed at him by Gobind, absconded, which, however, grazed his forehead and nose. The rioters then effected their purpose, and carried off all the grain without a person on their side being touched. The two prosecutors' wounds were superficial"

"The deceased gave his evidence before the police on the 30th January last, and before the Officiating Deputy Magistrate of Sherghotty, on 2nd February following, much to the same effect, naming Purbhoo Singh, and Dorpmath Singh besides those absconded, as amongst the rioters, and Doondah Singh, as the person who had cut him down with a sword."

The prosecutors, abiding by their former statements, recognise the three defendants, Doondah as the person who cut down Bundhoo Cahhar with a sword, and Ramchurn and Ishur Singh, as those who were engaged in the riot.

The witness Petumber Singh, adheres to his former deposition and recognises the three prisoners. He says he saw Doondah cut down Bundhoo, and that the two other prisoners were actively engaged in the riot.

The witnesses Nos. 4 and 5, after reiterating what they had in a great measure previously stated, recognised Doondah, Ishur, and Ramchurn, as those who were present in the riot, and the first as the Doondah, who cut down Bundhoo, by the order of Futtehnarain. They also state that with Petumber witness No. 3, and Jeodharry Sing

Wit. No. 4, Rajoo Singh.

" " 5, Ubeeburun Singh.

No. 2, who is absent, they carried Bundhoo in his wounded and helpless condition from the Kullyhan to his home.

The prisoner No. 1, Ranchurn calling himself the defendant of Purbhoo Singh, admits that he was at mouzah Cacharra, and witnessed the riot; that he stood in the Kullyhan by the order of Purbhoo Singh, but cannot say whether such Kullyhan was Purbhoo or Nunkoo Singh's; that he saw Futtehnarain, and heard that Doondbehadoor Singh struck Bundhoo with a sword. In the foudjary, however, this prisoner states he saw the blow struck by the person aforementioned, and he now recognises the Doondah present as the one, who cut down Bundhoo.

Doondah Singh, who says he is sometimes called by that name and sometimes Doondbehadoor Singh, denies his having committed the riot, or having wounded any one. He pleads that the charge is brought against him out of enmity, and that if he, according to the statement of the plaintiffs and their witnesses had been present in the Kullyhan he would have wounded Nunkoo and Hurgeanee, not their golan Bundhoo; that the real fact is that these prosecutors, in order to bring him and his relations to ruin, killed Bundhoo themselves; that in 1260 F. S. previous to the affray he was at the village of Nowady, where he remained with his father-in-law for four months, after which he went to Puriag and entered into service.

The prisoner No. 3, Ishur Singh pleads an *alibi*, or absence at the village of Kurma where he staid with his Popo, but his Popo's name he does not know.

Witnesses Nos. 6 and 7, or Santokee Singh, and Nurkoo Singh state they were present

Wit. No. 6, Santokee Singh.

" " 7, Nurkoo Singh.

at the time of the riot and saw prisoner No. 1, in the Cucharra

Kullyhan, which belonged to Nunkoo Singh.

Witness No. 8, Surdam Singh the father-in-law of Doondah

Wit. No. 8, Surnam Singh. says he (Doondah) came to his house in Nowady in the month of

Angun, (Doondah himself says it was in Jet) and that after remaining four months, he heard he had gone to Puriag, that during the period of his stay he shewed symptoms of a disturbed mind, as he used to go away for a day or two without touching food.

Witnesses Nos. 9, 10 and 11, depose in this wise, that they

Wit. No. 9, Chuckoury Singh.

" " 10, Chuckoury Muhto.

" " 11, Unnuth Muhto.

saw Doondah at Nowady, that they had opportunities of seeing him occasionally every three or four days and the two first main-

tain that he was in perfect possession of his mind.

No. 12, Radha Singh, the brother of Surnam Singh, also

Wit. No. 12, Radha Singh.

deposes that he saw Doondah at Nowady, but he cannot remem-

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ber the month of his arrival, and that he had no ailment of any kind affecting his mind.

The remaining witnesses from Nos. 13 to 17, all depose that Ishur Singh went to Kurma village. But Nos. 13 and 14 further state that they have no interest in that person, and only went to see whether he was there, because they were told

to do so, by Ishur Singh's mother, who lives at a distance from it of ten *cosse*.

The law officer with whom the case was disposed of, finds the prisoner No. 2, or Doondah Singh guilty of the wilful murder of Bundhoo Cahhar, and of being an accomplice in the riot attended with such murder. Also prisoners Nos. 1 and 3, of being accomplices in the riot attended with the wilful murder of Bundhoo, and of so much of the 2nd count, as relates to their complicity in the wounding of the prosecutors Nunkoo Singh and Hurganee Singh. Doondah he pronounces liable to *kissas*, the other two or Ramchurn and Ishur Singh to punishment by *akoobut*.

In this verdict I concur. It has been shewn before, and must be fully believed that rioters were assembled, not merely for the purpose of taking away a quantity of grain, but that they set out on their mission armed, with a fixed determination to carry it off by force, and to oppose by violence those who interposed. On their arrival at the threshing-floor at Cachurra, the interference offered to them appears to have been slight indeed, amounting to little more than a remonstrance, and on the part of the deceased Bundhoo this opposition only is apparent that he stooped down and attempted to put aside the baskets, which had been placed there by the rioters for the purpose of lifting the grain, when he was immediately struck down by Doondah with a sword. Two wounds were thus inflicted, but the intent to murder seems to be clear from the nature of the first wound. It is described by the medical officer as "a severe wound on the back about eight inches, commencing where the neck joins the trunk, extending downwards and inwards obliquely towards the spine between the ribs and shoulder-blades, the second or smaller wound was about three inches long just below the first." To shew the force with which the blow was struck, and the consequent intent to take away life the "*post mortem*" is thus told "the wound had penetrated into the cavity of the chest, completely dividing four of the upper ribs near the spine." And as it is added by the medical officer that wounds must have been inflicted with great violence, and on the deceased, when he was stooping. Not only then was there no provocation given, but an advantage taken for the better fulfilment of

the purpose contemplated. That lockjaw supervened is true. But it was the result of the mortal wound. It can therefore form no pretext for the escape of the prisoner. Neither can the empty plea set up by one or two witnesses that his mind was in a disturbed state. An objection not raised even by the defendant himself. Neither can the excuse made at one time by Doondah, that his name is Doondbeharree Singh, be of avail. His own father-in-law recognizes and calls him by the name of Doondah only, and says he is known by no other, and the prisoner finally admitted that he is called Doondah also. I see no mitigating circumstance, for the man, who goes forth in broad-day, though in a crowd, armed with a deadly weapon, and commits murder, must be deemed as culpable as that person who selects for his purpose the dead of night and accomplishes his end alone. And in such cases as the present, such violence should be put down with the strong arm of the law more especially when there is no doubt of guilt against any of the prisoners. Their own evidence can afford them no succour. I would therefore convict Doondah of the wilful murder of Bundhoo, and of being an accomplice in the riot attended with his murder and recommend that he should suffer death by being hanged. I would also find both the other prisoners or Ramchurn and Ishur Singh guilty of being accomplices in the riot attended with the wilful murder of Bundhoo, and the wounding of the prosecutors Nunkoo and Hurgeanee and would sentence them each to ten years' imprisonment with labor and irons in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The records of the two previous trials, in this Court, (v. N. A. Reports cited in p. 646) and of this, have been perused by us.

The prisoner Doondah No. 2, has been named from the very first information at the police consistently throughout; by the deceased before his death; (on oath); and by all the witnesses in all the trials, as the person, who with a sword cut down Bundoo Kahar. This prisoner does not substantiate his plea of *alibi*. In addition to the description of the wound given above by the Sessions Judge in his letter of reference, we find the Civil Surgeon states as his reason for considering the blow to have been given with very great violence, with reference to the depth and size of the wound; "the ribs in this situation consist entirely of bone, and not, as in front, of cartilage." There was no provocation on the part of the deceased; he was stooping to remove a basket brought wrongfully to take off his master's grain. The prisoner Doondah No. 2, came with a large body of armed men, he himself being previously armed with a sword. Even at the threshing-floor he had time for reflection as to the consequences of his act. All these circum-

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stances indicate a malignity which justly involves of itself upon the prisoner the extreme penalty of the law. But further, the frequency of this murderous use of *lethal* weapons in this part of the country calls, in our opinion, for exemplary punishment; and we sentence the prisoner Doondah No. 2, to death accordingly.

The prisoner Ishur No. 3, is deposed to consistently from the first police information to the end, as giving orders in the riot. He does not substantiate his plea of *alibi*. We sentence this prisoner to fourteen years' imprisonment in labor and irons, in banishment.

The prisoner Ramchurn No. 1, was not mentioned by any witness in the first information at the police; but was subsequently charged before the Magistrate. He is a servant of the attacking party (Purbhoo), and admits his presence at the riot: but urges that he took no active part in it. The witnesses for the prosecution depose, however, that he did; and his own witnesses state that he was with the rioters, armed with a stick. We do not think he succeeds in shewing that he was not. We sentence him to ten years' imprisonment, with labor and irons in the zillah jail.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs., *Officiating Judges*.

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GOVERNMENT AND KISTO MUNDUL

Chota-Nag-  
 pore.

*versus*

DWARKANATH MUNDUL.

1857.

May 8.

Case of  
 DWARKANATH  
 MUNDUL.

CRIME CHARGED.—Murder of his wife, Ambeeca Soorni.

Committing Officer.—Mr. A. G. Hay, Joint-Magistrate of Gobindpore.

Tried before Captain W. H. Oakes, Deputy Commissioner of Chota-Nagpore, on the 10th March, 1857.

*Remarks by the Deputy Commissioner of Chota-Nagpore.*—A few days previous to the date of this occurrence, 28th December 1856, the prosecutor, Kisto Mundul, father of Ambeeca, deceased, a girl of about twelve years old, had brought home his daughter, from the house of the prisoner, her husband, promising that she should return in five days. During the day of the 28th December, 1856, the deceased had gone with her brother, Shustee, witness No. 1, to collect cow-dung. In the afternoon the prisoner arrived at his father-in-law's residence, and having taken some refreshment departed

Prisoner sentenced to be imprisoned for life in transportation; malignant intent to murder not being sufficiently proved.

and went to the house of Nofur Tacoor witness No. 11, Tripoo-  
ra grand-mother of the deceased fearing that the prisoner might  
get angry, because his wife was collecting cow-dung, went out  
to meet her and had just taken a basket of the cow-dung from  
her, when the prisoner ran towards them and while approach-  
ing seized a "*sumut*" which was lying on the ground in the  
compound of Heera Quireen, witness No. 4, and making use of  
abusive language towards his wife struck her several times with  
the "*sumut*" and when she had fallen, he thrust the instrument  
into her private parts. The deceased became senseless and the  
prisoner fetched some water for her and carried her in his arms  
to his father's house, where she died the next day.

The prisoner pleads *not guilty* throughout and in the Sessions  
Court, asserts that the charge has been brought against him on  
account of enmity between his uncle and the uncle of the pro-  
secutor. Of this, however, he has failed to bring forward any  
proof.

That the deceased was killed by the prisoner is established in  
the most positive manner by the testimony of the eye-witnesses\*  
who were present at the time that he attacked his wife, wit-  
nesses, Kanny Roy, No. 5, and

- \* No. 1, Susteeram Mundul.
- " 2, Tripooora Mundaiany.
- " 3, Dhona Quiry.
- " 4, Heera Quireen.

Haradhun Napit, No. 10, also depose that the deceased said,  
that she had been assaulted by her husband. No other cause  
for the prisoner's conduct appears, except that he seems to have  
been seized with ungovernable rage, because his wife had  
been engaged in gathering cow-dung. When the prisoner first  
perceived the deceased he may have been some eighty or nine-  
ty yards off, and while running towards her, appears to have  
seized the "*sumut*" which was lying in his way. The instru-  
ment is one very likely to cause death, if used with violence to-  
wards a person of the tender age of the deceased. That the  
injuries received were severe and sufficient to cause death, is  
apparent from the evidence of the witnesses named in the mar-  
gin.† From the testimony of

- † No. 6, Annoda Mundul.
- " 7, Manik Koot.
- " 8, Rosik Mundul.
- " 9, Mohesh Chunder Dutt,  
Sub-assistant Surgeon.

the Sub-assistant Surgeon, it ap-  
pears that the death of the de-  
ceased was caused by concussion  
of the brain and by the injury  
resulting from the "*sumut*" hav-

ing been thrust by the prisoner into her private parts.

The jury‡ find the prisoner  
guilty.

The crime of the prisoner  
amounts, in my opinion, to murder. The provocation received  
by the prisoner, if such it can be called, is quite inadequate to  
palliate in any way his cowardly and inhuman attack on his

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1857. wife, and I would beg to recommend that he may be sentenced capitally.
- May 8. *Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We do not think this case presents those features of deliberation and malignity which require the extreme penalty of the law for the purposes of justice. The cudgel or pestle, about two cubits long, and weighing three seers, was lying close by in a neighbour's yard; and the record shews that there was no sign of a previous desire to injure the deceased on the part of the prisoner, but that in a sudden fit of passion, on a very slight cause it is true, the prisoner inflicted the blows on the head of the deceased, which ruptured the vessels of the brain and caused death. The other injury, however brutal, is stated by the medical testimony not to have been dangerous. The prisoner further immediately carried the deceased to her father's; and was much grieved at his own acts.
- We sentence the prisoner to be imprisoned for life in transportation beyond seas.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Chota-Nag-  
pore.

NUNDOO ROWANEE, BURKUNDAZ.

1857. CRIME CHARGED.—1st count, murder of Madhub Podhar and Radhamony Poddarin; 2nd count, wounding with intent to kill Laulmony Poddarin, Beejoo Moira and Kollan Moira.
- May 12. Committing Officer.—Mr. A. J. Hay, Joint-Magistrate of Gobindpore.
- Case of NUNDOO ROWANEE BURKUNDAZ. Tried before Captain W. H. Oakes, Deputy Commissioner of Chota-Nagpore, on the 7th March, 1857.
- Prisoner sentenced to imprisonment for life, in absence of any trace of malignant design to take life. *Remarks by the Deputy Commissioner.*—About 9 P. M. of the 26th September, 1856, Mussumat Laulmony, witness No. 1, and Mussumat Radhamony, deceased, were passing from the house of the latter to the dwelling of Mussumat Laulmony in the village of Jhuria, when the prisoner without saying a word, suddenly attacked them with a sword, wounding them both severely, Mussumat Radhamony on the waist and arm, and Mussumat Laulmony on the shoulder, waist and ribs. An outcry being raised by Mussumat Radhamony, Madhub Poddar, her son came out of his house to ascertain what had happened, when the prisoner immediately cut at him with the sword, and

severed his left hand from his body. Kollan Moira and Beejoo Moira, witnesses Nos. 14 and 15, hearing the disturbance, also ran up to the spot and were both wounded on the left arm by the prisoner. On the 21st October, 1856, Madhub Poddar and Radhamony Poddarin both died

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from the injuries they had sustained.\*

The prisoner, who is a burkundaz of the Rajabhitta thannah and had only three or four days previously come on duty at the out-post in the village of Jhuria, immediately proceeded with the bloody sword in his hand to the tehsildar's cutcherry, which was about 400 yards off and informed the tehsildar that he had wounded four or five robbers.† The prisoner delivered over the

- † No. 2, Sharoo burkundaz.
- „ 3, Poreesh Sharma Peon.
- „ 4, Kashinath Sircar tehsildar.
- „ 5, Kanaram Ghose mohurrie.

bloody sword to the tehsildar, and dictated a report to be sent to the darogah. In this report he stated that while going his rounds he had fallen in with some robbers, and having been attacked by them he had wounded four or five of the party.

Sharoo burkundaz, witness No. 2, went to the spot and found that the wounded persons were all inhabitants of the village, except Kollan Moira, witness No. 14, who is brother-in-law of Goburdhun Modduck witness No. 16, and had come to see him. Before the police the prisoner made the same statement as before the tehsildar.

When brought before the Joint Magistrate of Baghsooma the prisoner did not materially alter his mofussil statement, except that he asserted that he had only wounded one person named Kollan Moira.

In the Sessions Court the prisoner pleads *not guilty* and asserts that he only wounded one of the robbers, and further urges that this charge has been got up against him with the view of causing the out-post to be removed from Jhuria, as the villagers were unwilling to have the pharce there, because the daughter of one of the inhabitants of the village had lately intrigued with Madhub Singh jemadar. The prisoner, however, brings forward no evidence in his defence.

This is a most extraordinary case. It is proved, I think, beyond the shadow of a doubt, that the prisoner wounded no less than five individuals, and that two of these, Madhub Poddar and Musst. Radhamony Poddarin died‡ from the effects of

- + No. 11, Kisto Poddar.
- „ 12, Pochoo Poddar.
- „ 13, Moheshchunder Dutt, Sub-Assistant Surgeon.

the wounds received at his hands. The attack made by the prisoner on the three survivors, was equally murderous, but was fortunately not attended

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ed with a fatal result. I am quite at a loss, however, to discover any cause for this deadly onslaught on these unoffending persons. The prisoner had but just come on duty at Jhuria, and there is not the slightest trace of any enmity between him and the inhabitants of the village.

Witnesses Honooman Singh burkundaz, No. 20, Koonjul Singh burkundaz, No. 21, and Dabee Singh burkundaz No. 22, prove that the prisoner was in the habit of taking *gunjah*, but he never appears to have been excited to acts of violence by the drug. When the prisoner proceeded immediately after the occurrence to the tehsildar's cutcherry he did not exhibit any symptom of excitement caused by having partaken of *gunjah* or any other stimulant. Of the prisoner's insanity there is not the slightest indication.

Although no motive can be traced as far as I am able to see, for the acts of the prisoner, I quite agree with the jury\* in opinion, that the charges against the prisoner are fully established, and under the circumstances of the case, cannot recommend any other sentence than a capital punishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) There can be no question as to the prisoner's hand having committed the deed, but it is impossible from the record to discover the motive which actuated him. It is equally impossible from the record to attribute to the prisoner malicious intent or malignant design towards the individuals whom he attacked, for he had only been a few days at Jhuria, and had no cause of quarrel with, and indeed was unknown to most of the sufferers. There is no proof that he was at the time intoxicated with *gunjah*, although from the evidence of witnesses, Nos. 20, 21, and 22, the prisoner appears to have been in the habit of taking it, but not in such quantity as to excite him to fury. To the tehsildar and dargah he stated that he attacked a party of thieves, and wounded four or five of their number. To the Magistrate he modified this statement, and said he had wounded one thief, and then had run to inform the tehsildar; that shortly after four or five people from the bazar, wounded by the thieves, or some one else, came, and charged him with having wounded them. At the Sessions trial the prisoner sets forth that he saw eight or ten thieves collected at the cross-road; that they attacked the women, who were passing by, and the cries of these brought out their friends, who were also beaten by the thieves; that he went to their assistance, and after receiving four blows from the robbers, cut down one of the gang, and that the others then dispersed. It is hardly possible to credit the prisoner's statement that he believed himself to have been attacked by, and to have wounded

\* Koylashnath Chatterjee mooktar.  
Shamlall Dutt, mooktar.

thieves, for the parties first attacked were the two women, and as far as can be ascertained from the record, there was not at the time any other person on the road. Still there is no evidence of express malice or malignant design against the individuals attacked, and no motive is in evidence for his strange conduct. Under these circumstances, and with reference to the practice of the Nizamut Adawlut not to sentence capitally, except in cases where there is some proof of express malice or malignant design towards the individual killed, we deem this an extenuating circumstance, and sentence the prisoner to be imprisoned for life, with labor and flogs, in transportation beyond seas.

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Case of  
NUNDOO  
ROWANNE  
BURKUNDAZ.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

GOPAL DOSS BYRAGEE.

Moorsheda-  
bad.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Obhoy Churn Bose, Deputy Magistrate under the Commissioner for the suppression of dacoity.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 28th March, 1857.

*Remarks by the Officiating Sessions Judge.*—The prisoner was named in a confession before the Deputy Magistrate under Commissioner for the suppression of dacoity at Hooghly, and on being apprehended, was sent to the above committing officer; he reached this station on the 7th January, and denied the charge; on the 10th idem a report was made to the Deputy Magistrate that the prisoner wished to confess, and he then confessed in a general and in a detailed confession to having belonged to a gang of dacoits, and to having been concerned in those dacoities; witnesses to the occurrence of two of them clearly prove that they did take place, and the record of one (the record of the other having been destroyed) shews that another prisoner was sentenced by the Sessions; the Deputy Magistrate does not state what has become of the record of the third dacoity, nor has he sent up any proof of its having occurred.

Before me the prisoner, first asking whether he was to tell the truth or not, pleaded *not guilty*, and said he had been made

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Case of  
GOPAL DOSS  
BYRAGEE.

Prisoner con-  
victed and  
sentenced under  
Act XXIV.  
of 1843. Re-  
marks upon  
certificates re-  
quisite, and  
omission to  
note pages of  
records refer-  
red to.



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Case of  
GOPAL DOSS  
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to confess before the Deputy Magistrate by the threatenings of one of his people, but he could produce no proof of this, and the witnesses to the confession clearly prove that it was voluntarily and freely given; the records submitted also shew that the prisoner has suffered imprisonment for burglary and for being a bad character; considering the case therefore proved by the prisoner's voluntary confession before the Deputy Magistrate, I convict him of the charge laid, and recommend that he be sentenced to imprisonment in transportation for life beyond the sea.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner was apprehended on the confession of Gopal Bagdee, as having been concerned in committing a dacoity in the house of a brahmun in mouzah Beaspoor, thannah Kalkapoor. The prisoner has confessed to committing three other dacoities, viz. in mouzah Simuldanga, thannah Jan Mahomedpoor;—mouzah Jawkala, thannah Kalkapoor;—and in mouzah Choonakhally, thannah Jan Mahomedpoor, in the house of Bhugobutty Chowdrain. This confession is corroborated by the depositions of the prosecutors, Ramsoonder of Simuldanga, and Musst. Bhugobutty Chowdrain, and by those of their witnesses, who prove that dacoities did take place in their houses, as represented by the prisoner. We convict the prisoner on his voluntary confession, and sentence him to imprisonment for life with labor and irons in transportation beyond sea.

Before the Sessions Judge the prisoner pleaded *not guilty*; and stated that his confession to the Deputy Magistrate, had been extorted by ill-usage and promises by the omlah. Such a defence confirms the Court in their opinion expressed in their decision in the case of Rajun Moollah, 5th May, 1857, of the necessity of special certificates being affixed to the records that no collusion or improper means have been used to obtain or support a confession. Copy of the order referred to above is herewith sent for the information and guidance of the Deputy Magistrate. The Court observe that the Deputy Magistrate has omitted to put any question to the prisoner regarding his participation in the Beaspoor dacoity, on account of which he was apprehended.

The Court request that the Sessions Judge, in reporting similar cases in future, will note, in the margin of his letter, the particular record he refers to, with the name of the person in whose house the robbery was committed; and that he also will note the *exact* page of such records as bear particularly on any point cited by him, in evidence against the prisoners.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT, MR. R. SOLANO AND ANOTHER

*versus*

JOYPERKASH SINGH (No. 8.) AND SHEWSUHOY  
GWAILLA (No. 9.)

CRIME CHARGED.—1st count, riot attended with arson and wilful murder of Gunga Singh, severely wounding Mr. Solano with intent to murder him and slightly wounding Runglall Singh; 2nd count, accomplices in all of the abovementioned crimes.

Committing Officer.—Mr. M. Brodhurst, Officiating Magistrate of Behar.

Tried before Mr. T. C. Trotter, Officiating Sessions Judge of Behar, on the 26th February, 1857.

*Remarks by the Officiating Sessions Judge.*—The statement of Mr. Solano, the prosecutor, is thus given in his own words. “On the morning of the 31st October last, I went to Seepah factory to relieve my assistant, Mr. Hart, who was about to leave the concern. That day and the two next days, or the 1st and 2nd of November were passed at Seepah in taking charge from the gentleman aforesaid. On the night of the 2nd at about 12 or 1 of the morning of the 3rd November, I was awoke from my sleep by a great noise, which was being made at all the doors. I immediately got up, and was proceeding towards the room occupied by Mr. Hart, when I met him in the hall with a light and his revolver pistol in his hand. I asked him what had occurred, when he said, We are attacked, and we will certainly be murdered. I told him to rush out, and to endeavour to disperse the crowd by killing some one, and by which means I hoped to escape also. He ran out, on which I heard the report of two shots. After that I saw no more of Mr. Hart. On his departure the sound of blows was again heard at all the windows, and as I was unarmed I did not dare to go outside. There being a light in the bathing-room, I went there and blew it out, hoping thus to conceal myself. And on my return into the bed-room, I found the doors were being opened. Immediately after the people from without effected an entrance, and finding also a great light and smoke proceeding from the south side of the bungalow, which had been set on fire, I rushed out, there apparently being no other remedy. When I had got as far as the enclosed verandah, which was outside of my bed-room, I received a

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Case of  
JOYPERKASH  
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and another.

Riot with murder and wounding. The evidence as to the identification of the two prisoners being considered by the Court true, and prisoners' *alibis* not being proved, prisoners convicted; and under the very aggravated circumstances of the case of riot attended with murder, severe wounding and arson, sentenced to imprisonment for life in transportation.

*Remarks on the proceedings of the Magistrate and Police.*

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and another.

blow on the back of my head as I thought from a spear. But I still endeavoured to make my escape, and on getting altogether outside of the house, I was met by several people, who called out, 'Cut off his head, cut off his head,' many of these people had torches in their hands, and there was a great light from the bungalow being on fire. Among them I recognised my late *tehsildar*, Joodur Singh, Thakoor Oja, Sheo Gwalla, Teg Ally, Sheosuhoy Gwalla, Sheoburut Gwalla and Shajafil Singh who were familiar to me, and implored them to spare me, but they beat me until I fell, which I did near my out-offices, and becoming senseless, I know not what occurred after that."

This prosecutor also added in reply to questions, which were put to him, that he did not recognise who struck him with a spear, that to the best of his belief he was wounded by all, whose names he has taken, save Teg Ally; "that Joodur Singh" repeatedly made use of the words "*math katho*;" that his *sirdar* bearer, Brijonath, Sheodian Singh, the *jemadar* of the factory, the two *peons*, who were wounded, Runglall and Gunga Singh, the latter of whom is since dead, and some of his *chuprassees*, including Nubbce Buksh and Salamut Ally, were in and about the bungalow on the night in question. But that the *peons* only were on guard at the time, that he was met by about thirty or thirty-five persons only on his attempting to escape outside, though the bungalow was surrounded, and that to the best of his recollection he has never seen Joyperkash Singh before, hence he cannot identify him; but that he recognises Sheosuhoy Gwalla.

Runglall, also a prosecutor, states that at midnight, on the 20th of Kartick, on a Sunday, he was on guard at the Seepah bungalow with Gunga Singh, and that Ram Kewul and Radha were also in the verandah, when about five hundred men, variously armed with *gurasas*, *birchys* and *tulwars* approached from the south-east corner, calling out, Where is Solano sahib? we will cut off his head; that on their reaching the bungalow, and attempting to break open the door, he made a noise, and was immediately beaten by Seosohye with a *lattee* on the fingers of the left hand, and by Sheo with a *lattee* on the left elbow. But previously he was enabled to recognise in addition to those persons Joodur Singh, Bishonat Singh, Jeipurkash Singh, Sheoburut, Teg Ally, Piumbur Buksh and Kheir Ally Khan, and such recognition was easy from there being a great light thrown around from the burning of the roof and the *tatties* of the bungalow which were on fire; that Joodur Singh was on foot at that time, and that the *hulla*, or uproar, was such, that he could not see who beat Gunga Singh; that his senses then left him, until the rioters had fled, when they returned, and he then saw Mr. Solano laying on a cow-dung heap at the back of the

kitchen by which time the police had arrived. This prosecutor also adds that the Seosohye present is the one who struck him, and that he identifies both that person and Joyperkash, the prisoner No. 8.

Theodian Singh, likewise a prosecutor, affirms that he was on the west side of the bungalow on the night in question, when he heard Runglall, who was on the east, call out "*dakha*;" that he went to that side and saw a large concourse of men amounting to four or five hundred armed with swords, *gurasas* and *lobundas*; that on their reaching the bungalow they immediately set fire to it on the south side, and beat Gunga and Runglall, and having done so they broke open the door on the west side, when Mr. Solano escaped by the north. On Mr. Solano's making his appearance, Joodur Singh called out, The *sahib* is escaping, and he then struck him with a sword, while others, who had come from both sides of the bungalow, beat him until he fell on the dirt heap at the out offices. Then again Joodur Singh called out, "Cut off his head." But the universal response was, He is dead. On this Joodur Singh directed a light to be put to the east side of the bungalow, which was done by Sodafil's applying his torch to the *tattee*. They then went off, on the approach of the police who came about seven minutes after Mr. Solano had fallen. This prosecutor adds that Joodur beat Gunga with a *birchy*; that Sheo struck him with a *gurasa* on the knee; that Sheo and Seosohye with the *lattee* and of their *gurasas* beat Runglall; that Mr. Solano called out to those, who met him, not to beat him, as they were his servants; that by the light from the raging of the fire he was enabled to recognise different persons at different times. But the following he distinctly saw on Mr. Solano's coming out of the Bungalow, viz. Seosohye, Joyperkash, Bishonath Singh, Sheo Uheer, Soomber Dosad, Sodafil Singh, Thakoor Oja, Rajkoomar Oja, Joodur Singh, Sheoburut, Reka Singh and Burosa Singh; that Seosohye beat Mr. Solano with a *gurasa*; Joyperkash with a *lobunda*; Bishonath with a *gurasa*; that Sheo had a *gurasa* in his hand; that Thakoor Oja struck him with *birchy* or spear; Rajkoomar with a sword; Sodafil with a *lobunda*; Soomber with a *lobunda*; and that he recognised many, while they were going away, in addition to those previously identified, before Mr. Solano's exit from the house. But it must be noted, that while this person took the names of only twenty-eight persons in the Magistrate's Court, he did not apparently once refer to Bishonath Singh, who is here spoken of as a principal actor in the scene.

Laldharee, witness No. 1, deposes that on the 2nd of November, at midnight, he was aroused by noise of *dakha* proceeding from Gunga Singh, who

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Wit. No. 1, Laldharee Singh  
Babhun.

1857. was on guard at the Seepah bungalow; that he went towards him, and saw the rioters, to the amount of five hundred men, approach; that they were calling out *Ally, Ally*, and having set fire to the building on the south side, Joodur struck Gunga with a spear, and Sheo wounded him with a *gurasa*; they then broke open a door to the west, upon which Mr. Solano came out by the north side, and was met by Joodur, who called out to the others to beat him; that Joodur struck him with a sword, Seosohye with a *gurasa*, Bishounath with a similar weapon, Thakoor Oja with a spear, Rajkoomar with a sword and Joyperkash and Sodafil and Soomber with *lobundas* when he (Mr. Solano) ran forward a little and fell, and at that time some said, Cut off his head; others that he is dead, on which Joodur Singh directed the bungalow to be set fire to on the east side, which was done by Sodafil with his *mussal* or torch. This witness further states that though it was a dark night, the light from the bungalow and from the *mussals*, for there were three on the north side, was as that of the day; that Sheo and Seosohye each beat Runglall with a *lattee*; that the blows given by Seosohye and Joyperkash were on the head; that what he witnessed he saw from a distance of ten *kudums*; that the rioters were all armed, and remained upwards of half an hour, or one *ghurry*; that Joodur Singh was on horseback when he struck Mr. Solano; and that Thakoor Oja, Bukshy Singh and Hursperashad Singh were also mounted; that he shifted his position from time to time, sometimes advancing, sometimes receding a few steps; and that he thus recognised those he has named, at different times; that he saw Radharam Kewul, Sheodian Singh and Nubbee Buksh during the riot; and that the bungalow was entirely burnt.

The witness No. 2, Rajkoomar, the jemadar of Belkhurrah, says that in the month of Assin he had been appointed to collect in the village of Kominy; that he had heard Joodur Singh say that he would kill the Sahib, and that he would not allow him to make collections in that estate; that he set out to Seepah to give information of this circumstance; but did not impart the information, having been dissuaded from so doing; that he remained at Seepah on the night in question, and at midnight was aroused by the cry of *dakha, dakha*, proceeding from Runglall and Gunga. Having gone near them he saw about five hundred men armed with spears, swords, battle-axes and *lattees* approach the house, to which they set fire; that they were calling out *Ally, Ally*, cut off Mr. Solano's head; and that this expression was particularly made use of by Joodur Singh, who wounded Gunga with a spear on his crying out; that Sheo likewise beat Gunga with a battle axe, when he fell. The door on the west was then broken in; and on Mr. Solano's escaping by the north, Joodur Singh, who

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was on horseback, cut him with a sword and calling out at the same time, "Cut off his head." Bishonath Singh beat him with a *gurasa*, Seosohye with a like instrument, Thakoor Oja with a spear, Rajkoomar with a sword and Joyperkash and Sodafil and Soomber with *lobundas*, until he fell, when Joodur Singh again exclaimed "*nath kathlo*;" that Joodur then ordered the house to be fired on the east side, which was done by Sodafil. It is also stated by this witness that the blows administered by Seosohye, Bishonath and Joyperkash, all took effect on the head, which was uncovered; that Thakoor Oja, Hurlpurshad Singh and Bukshy Singh were mounted; that the light from the blaze of the bungalow and *mussuls* was such that the whole compound was illuminated; that he was thus enabled to recognise those he has named, who were previously known to him, and to see them at different times, by having the opportunity of changing his position from time to time behind different trees; that he was within a distance of five bamboos, when Mr. Solano was beaten, and that he also saw Sheodian and Laldharee during the riot, as well as Nubbee Buksh, Ram Kewul, Radha, Sulamut and Adhian; that Mr. Solano did urge those whom he encountered, to spare his life, and that the entire bungalow was burnt.

Rankewal, witness No. 3, confirms in all material points what has been stated by the

Witness No. 3, Rankewal  
Tewary, Brahm.

previous witnesses. He swears to having seen the bungalow first

of all set fire to on the south side, to the wounding of Gunga by Joodur Singh with a spear, to his being struck by Sheo with a *gurasa*, to the beating of Runglall by Sheo and Seosohye with a *lattee*, to the breaking open of the western door, to the escape of Mr. Solano by the north side, to his being then struck by Joodur Singh with a sword, by Bishonath with a *gurasa*, by Seosohye with a *gurasa*, by Rajkoomar with a sword, by Thakoor Oja with a spear, by Joyperkash with a *lobunda*, and by Sodafil and Soomber with a *lobunda*, the former of whom under the orders of Joodur Singh set fire to the bungalow on the east side; that the wounds inflicted by Bishonath, Seosohye and Joyperkash took effect on the head of Mr. Solano, which was bare; that Joodur Singh was on horseback when he struck Mr. Solano; and that Thakoor Oja, Bukshy Singh and Hurlpurshad were also on horseback; that Mr. Solano said to those, who met him, Why do you take my life? But that he was beaten till he fell on the dirt heap by the out offices; that the bungalow was burnt, and from its blaze and that of the *mussuls* there was a light, which was abundant for the purposes of recognising those he has named.

Nubbee Buksh, witness No. 4, swears in like manner to the

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Witness No. 4, Nubbee Buksh Khan.

beating of Gunga, Runglall and Mr. Solano as has been described, and by those who have been mentioned by preceding witnesses; to the burning of the bungalow, firstly at the south side, and to its ultimately being set fire to by Sodafil Singh at the north east by the orders of Joodur Singh; to there being a blaze of light from the fire as well as the *mussals*; to his being thus enabled to recognize those he has named, who were formerly known to him, and to his changing his position from time, just as was done by Sheodian, Ram Kewal Tewary, Radha Tewary, Rajkoomar, Laldhary, Adian and Mungul, whom he saw during the riot; that what he witnessed was seen from a distance of twelve or thirteen *katts* and that there was a "*hulla*" or uproar arising from the four or five hundred armed men assembled, which might have reached to the thannah, distant about two gun-shots from the bungalow; that Joodur Singh more than once exclaimed, Cut off his head (Mr. Solano's); an exclamation, which was also echoed by the others, who were on horseback, of whom he recognized Thakoor Oja and Bukshy Roy.

The witness, Radha Tewary, No. 5, gives also eye-testimony

Witness No. 5, Radha Tewary, on all the points before detailed  
Brahmin. by the witness Ram Kewal, not only as the beating of the dif-

ferent persons mentioned, and the burning of the bungalow; but he refers to there being a noise, which would reach beyond the thannah, proceeding from two or two hundred and fifty men, and he states that he saw during the riot the witnesses Nos. 4, 1, 2, 6 and 9, and Sheodian, the plaintiff; that out of the four men on horseback he only recognized, besides Joodur Singh, Bukshy and Thakoor Oja; that what he witnessed he saw at different times from a distance of four bamboos, and by the great light, which was shed on all sides

The witness No. 6, Adhian Dosad, affirms that he went to

Witness No. 6, Adhian Dosad. Seepah on the Sunday in question as the bearer of a chit for

Ramtuhul from Bichuk Singh; that he witnessed the beating of Gunga by Joodur Singh and Sheo, as well as that of Mr. Solano by Joodur, Seosohye, Bishonath, Thakoor Oja, Rajkoomar, Joyperkash, Sodafil and Soombur, as has been described, and that the bungalow was set fire to by Sodafil, by the order of Joodur Singh, who more than once urged the rioters to cut off Mr. Solano's head; that there were not less than four or five hundred men, all armed; that the blows given by Seosohye and Bishonath were administered on the back of Mr. Solano's head, and that it was in consequence of there being no part of the bungalow on the east side on fire that a light was applied by Sodafil; that he saw during the riot the witnesses Nos. 1, 2, 5

and 4, and Sheodian Singh, who were from fear concealing themselves behind the trees in the compound, in which there were a large number; and that he did not escape to the thannah for fear of being beaten, and sharing the fate of the others, who were wounded that what occurred, and during which time the rioters were present, occupied a *ghurry* of time or more than half an hour.

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Byjonath Kahar, witness No. 8, the bearer of Mr. Solano, de-

poses that he was asleep in the  
Witness No. 8, Byjonath Kahar. Seepah bungalow on the Sunday

night, and that at midnight he was awoke by a loud noise of people calling out *Ally, Ally*, which induced him immediately to go out of the house; that on reaching the outside he saw a large crowd of men, some four or five hundred, all armed, and the bungalow on fire, from which there was a great light; that he heard his master thereafter calling out from within, Don't take my life! immediately upon which Mr. Solano came out by the north side, and was met by Joodur Singh, who was on horseback, and having struck the Sahib with a sword, called out that he should be beaten, which he was until he fell; that Joodur Singh then said, Cut off his head; but the others exclaimed, He is dead; what would be the use of this? that what he saw he witnessed from the north side, and was close, not more than twelve degs from his master when he ran out; that he could not recognize more persons than Gungputlall and Sha Ahmud, both of whom had been Mr. Solano's servants, on which account they were known to him; that the noise proceeding from the voices of all was such, that it must have been heard at the thannah, and that when Mr. Solano came out of the bungalow there were not more than thirty or forty men standing, that in like manner as he changed his position from time to time from fear, so did Nubbee Buksh, Salamut, Sheodian Singh, Laldhary Singh and Rajkoomar, all of whom he saw during the riot, which lasted for half an hour, and throughout which, from the burning of the bungalow and the *mussals*, there was a great light.

The witness No. 9, Mungla chowkeedar, says he was keeping

Wit. No. 9, Mungla Gwallah. watch at Seepah on the night

stated; and that he saw the approach of the rioters, some five hundred men; the burning of the bungalow on the south side: the exit from it, by the north, of Mr. Solano; his beating by Joodur Singh, who struck him with a sword; his fall at the back of the kitchen when beaten by others; that he heard the exclamation of Joodur Singh, that his head should be cut off, and witnessed the subsequent lighting of the bungalow on the east side by Sodafl; when the rioters dispersed. Afterwards he states that he went with witness No. 8, and Sheodian Singh to where his master lay, and that Nubbee Buksh, Salamut Ally, Laldhary, Adhian Dosad and Raj-



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koomar came up immediately, that notwithstanding the light, which was great, he only recognized Joodur and Sodafil Singh, and that he remained behind a tree with a view of saving himself, and did not go to the thannah to give information, lest he should be seen and cut down, for it was a bright light, and that the bungalow was entirely burnt, as the fire could not have been extinguished. This witness also deposes that the witness No. 6, or Adhian Dosad, brought a chit for Ramtuhul from mouza Kouka.

The witnesses Nos. 11 and 12, or those to the mofussil  
Wit. No. 11, Lalsa Rowniar. *sooruthal* of the 3rd of Novem-  
" " 12, Gopee Soondee. ber, stato that Mr. Solano had  
a wound on the right side of

the head, apparently that of a *gurasa*, his right arm broken, a wound on the left hand, which extended upwards, seemingly to the breast, from its being entirely bound up, and that at the same time he was vomiting blood, that Gunga had a wound on the left hand and one on right knee, a *gurasa* wound, and that Runglall had a wound on the head of a *lobunda* and two slight blows on the left arm, as if inflicted with *lattee*.

The witness No. 13, or Dr. J. B. Allen, has deposed that on  
Wit. No. 13, Dr. J. B. Allan. examining the wounds, which  
had been inflicted on Mr. Solano, they were of the following kind. On the right side of the head a spear-wound down to the bone, running slantingly across the scalp, also on the same side two or three other incised wounds, which were superficial, and might have been caused by the grazing of a spear. On the back of the head, down to the neck, various marks of blows much discoloured, and over the right ear there were similar marks, all of which must have been caused by *lattees*. Both bones of the right forearm fractured, and the fingers of the hand cut, as if from the attempt to grasp a sword with them; dislocation of the left elbow; the whole of the left arm from the shoulder down to the finger's ends shewed signs of severe beating. Across the stomach and left arm, and in a slanting direction there was a superficial cut as if received from a sharp instrument, and on the right thigh there was a wound of a like nature. This examination took place on the morning of the 5th November, at which time Mr. Solano was partially sensible; but his mind wandered at intervals, and continued to do so for some days afterwards.

With reference to the injuries sustained by Runglall and Gunga Singh this witness further deposes that the former only had a mark of a slight bruise on the back of the left hand; that the latter, who was in hospital for some days suffered from a severe incised wound, which entered into the joint of the right knee, and rendered amputation necessary. Without it, there could be no hope of recovery, as mortification would set

in. But he refused to undergo any operation, or to remain in hospital, and was accordingly discharged at his own request about the 15th or 16th of November. On the 3rd of December, when his body was inspected, mortification had set in, and caused death, and it is added that notwithstanding the age, sixty years, there was every reason to expect that from an amputation Gunga would have recovered.

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Witness No. 33, or Urshud Ally, darogah, who was summoned by this Court, has sworn that on Sunday, the 2nd of November, at midnight, Mr. Hart and Choalall came to the thannah and gave information that an armed body of nearly five hundred men had set fire to the Seepah bungalow, and were beating Mr. Solano; that within five minutes he reached the scene accompanied by Jaffer Ally and others, and found the bungalow on fire; that Mungla chowkeedar told him that Mr. Solano had fallen by the *gosala*, where he went, at that time Salamut Ally, Nubbee Buksh, Sheodian Singh, Bejonat and two table servants were with Mr. Solano, and Ramtuhul came up immediately afterwards; that Mr. Solano only took Joodur Singh's name, but Sheodian Singh, his servant, mentioned besides, those of Sheosuhoy, Sheo Gwalla, Akbur, Joyperkash, Bishonat and Thakoor Oja, whereupon the mohurrir was immediately sent off to Kominy, and the jemadar to Mynpoora to apprehend Sheosuhoy, Thakoor Oja and others; that when he reached the bungalow the whole compound was lighted up, a quarter of the house at least and more than one half of the *pateel tatties* consumed; that the compound on the north, east and south sides was studded with trees, behind which, if parties concealed themselves, they could easily see those standing by, or those coming out of the house; that Mr. Solano had fallen at the back as it were of the dirt heap, over which the roof of the *gosala* had thrown a shade, and to which spot exactly the light from the fire did not reach; but the face of such dirt heap was covered with light; that Mungla only took the names of Joodur Singh and Sodaful; that orders were sent from the compound to apprehend both the prisoners, Sheosuhoy and Jeipurkash, from the information then and there obtained; and that the light, or lantern, which was brought from the house, was not so brought to enable Mr. Solano to be found, but to point out the way to the thannah, the night being dark, and it being necessary that he should be borne there on a *churpoy* with care; that there was blood discernible in quantities at three places, firstly at the steps of the bungalow, secondly, by the *imlee* tree at the north, and again by the *gosala*; that Joodur Singh from enquiry was unquestionably the sirdar; that he and Mr. Solano had previously been on bad terms in consequence of his having lost his service and the collections of

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Kominy, and that from his influence and power he could have brought together two thousand men if necessary.

Witness No. 34, also summoned by this Court, or Ramtuhallall deposes that at mid-

Wit. No. 34, Ramtuhallall. night of the 2nd November, he was asleep in his house, which is in the Seepah compound, and was aroused by a loud noise; that on rushing out he saw the bungalow was on fire, and that it was surrounded by many men, who were calling out, "Cut off the Sahib's head;" that from fear he ran to the south side, and concealed himself in a ditch while the rioters remained, which was less than half a *ghurry* of time, and did not run to the thannah, as it would have been necessary to have passed the house to get there; that on the arrival of the darogah he came into the compound, and found Mr. Solano lying on the *gobur* attended upon by Sheodian Singh, Mungla, Laldhary, Rajkoomar, Adhian Pasban, Salamut Ally, Nubbee Buksh, Beijonat and Burkhurdar Khan; that Adhian on the day referred to, was the bearer of a chit to him from Bichuk Singh; that the bungalow was about half burnt when he saw it, and that the light issuing therefrom was great, and that on his first coming out of his house there was a great light thrown around from the burning of the bungalow and the *pateel latties*, which protected the house on both the north and south sides; that Mr. Solano only took the name of Joodur Singh, but that the different servants of Mr. Solano, who have been above named, spoke of Joodur Singh, Joyperkash, Sheo, Sheoburun, Sodafil, Rajkoomar and others, as being in the riot, and Sheodian affirmed that Joodur had first beat the Sahib; that the bungalow was a substantial building, and could not have cost less than 1600 rupees in its construction.

The defendant, Joyperkash Singh, who is own-nephew to Joodur Singh, denies his guilt, and pleads that no confidence can be placed in evidence, which does not agree, and which is not given by those who are residents of Seepah. That if the statements of the plaintiff and his witnesses were true, there would be no such contradictions, such as have been dwelt upon by the Magistrate; that it was not possible for men in darkness, which rendered even the light of a lantern necessary, to recognise sixty or seventy men, and that Mr. Hart's deposition, to which great importance is attached by the Magistrate, falsifies the statement of Mr. Solano and others, who have given evidence on his behalf. *Firstly*, it will be seen that Gunga, Runglall and Sheodian Singh do not allow that they heard the noise from the discharge of the pistol, though Mr. Hart, in his deposition of 7th November, has said that he fired it off twice; and that they only were present. *Secondly*, that on the 3rd of November Mr. Solano gives the name of seven persons, viz. Joodur Singh, Sheo, Sheoburut, Teg Ally, Bukshy Singh and Thakoor

Oja as having been implicated; whereas on the 7th idem, he names no one, and on the 29th December refers to nine persons, of whom two of those first mentioned have been omitted, or Gunput and Bukshy, and in their places two, or Sodafil and Sheosuhoy have been introduced; that Mr. Solano while he has deposed to the recognition of these men by the light cannot tell how each beat him, yet the witnesses describe each blow distinctly, save Runglall, who does not know who struck the Sahib. *Thirdly*, Mr. Hart has deposed on the 27th December, that when Mr. Solano gave his deposition at the thannah on the 3rd of November, he did not name any one. *Fourthly*, Gunga Singh in the Magistrate's Court recognised five persons, Runglall No. 9, Sheodian No. 28, Laldhary No. 61, Rajkoomar No. 40, Ramkewal No. 50, Nubbeebuksh No. 49, Radha Tewarry No. 43, Adhian Dosadh No. 40, Mungla No. 2 and Runglall Singh, thirteen persons, all of whom were said to have been known before, hence it is singular that there should have been any contradiction as to numbers in the Sessions Court; and the manner in which they have recorded the names of people, village by village, will satisfy that these witnesses must have been tutored. *Fifthly*, that Runglall recognised several men in the foudjary Court as parties concerned, who were not at all implicated in the case, and that he has now been kept away from the Sessions Court. *Sixthly*, that the cause of enmity arises from Ukbur Singh his father having taken a sublease of the village of Kominy from Mr. Solano from 1259, F. S., and from the case regarding it having been brought into the Magistrate's Court, in consequence of Mr. Solano's interference and lastly this defendant states that on the night on which this crime was committed "Jeonath Mothoe" was bitten by a snake at mouzah Hurnah and brought to Kominy, where he was occupied, as is known to his witnesses, in prescribing an antidote.

Sheosuhoy Gwalla defendant, also denies his guilt, and states that he is now accused in consequence of his having prosecuted Mr. Solano's servants in 1248, and got them imprisoned for having killed his brother, Sheoruttun; that enmity has also arisen out of several other cases connected with the forcible detention of a pony, which was given by Mr. Solano to Sheodian Singh; by his dispossession from thirty-five beegahs of jagheer land in mouzah Mynpoora and plunder of forty-five head of cattle, both of which cases are pending; that the witnesses, who have given evidence, were not present, or they would have made mention of having seen Mr. Hart; and the doctor's testimony will show, that what has been stated regarding the beating of a *gurasa* is false. And in fine that on the day mentioned he was at mouzah Pursa in pergunnah Uncha, which is distant about twelve *cos*s from Seepah.

The witnesses Nos. 14, 15, 16, 17, 18 and 19, for the defence

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| 1857.        | Wit. No. 14, Goolab Singh, Babbun. | all state that Jeonath Mo-          |
| May 14.      | " " 15, Bukhoree Singh, ditto.     | thoe was bitten by a snake          |
|              | " " 16, Bhemul Gwalla.             | on Sunday the 20th of Kar-          |
| Case of      | " " 17, Bhugwunt Dosadh.           | tick, and taken to Kominy           |
| JOYPERKASH   | " " 18, Ramtul Singh.              | to Ukbur Singh's door at            |
| SINGH        | " " 19, Dookhit Muhto Koormee.     | midnight, where Joyper-             |
| and another. | " " 20, Jeonath, ditto ditto.      | kash, his son " <i>jarrd</i> " him. |

No. 20, or Jeonath Mothoe, deposes he was so taken from Hurna, and so treated. But in the Magistrate's Court Joyperkash makes no allusion to his being thus employed, or having any occasion for being so.

The witnesses Nos. 30, 31 and 32, in like manner confirm

Wit. No. 30, Purshun Gwalla.

" " 31, Surbjeet ditto.

" " 32, Dusaheen ditto.

the statement of Sheosuhoy, that he went to mouzali Bowah to see his cattle and stayed from the Friday till the Tuesday. But Sheosuhoy has never referred himself to date of arrival at, and date of departure from that village.

The law officer, with whom this case was disposed of, finds both prisoners guilty. Joyperkash on the charge of riot, and secondly with being an accomplice in the same. Sheosuhoy of riot, and the severe wounding of Mr. Solano with an intent to murder him, and again with being an accomplice in both these acts, and considers the first liable to punishment by *tazeer*, the latter to that by *akoobut*.

With this finding I cannot concur, as the evidence, if of any value at all, proves a greater degree of guilt than that which has been ascribed. But before referring to such specially, I must draw attention to the *futwa*, which, in itself, is inaccurate in more places than one. For instance the law officer says that had Joyperkash beaten Mr. Solano with a *lobunda* as is deposed to by the witnesses, such would not have been omitted from that gentleman's deposition, as he was enabled to recognise Sheosuhoy as having beaten him with a *gurasa*. Now Mr. Solano has made no such statement. He has merely deposed that to the best of his belief he was struck by Sheosuhoy and others named by him, save Teg Ally, but that he could not particularise how each man was armed, or whereby each individually he was struck. Again, it is recorded in the *futwa*, that the darogah has not stated that any of those of whom he made enquiries, took the name of Joyperkash. This, it will be found, is also contrary to fact. The darogah, it will be seen, had not only deposed that on his reaching the scene the name of Joyperkash was at once taken by Sheodian Singh and others. But that the mohurri was then and there despatched for his apprehension. Furthermore, it must be remarked that no proof is said to have been afforded of the arson in the first instance. But this would clearly imply that arson was

committed at some period ; and yet no further mention is made of it, or the complicity of either of the prisoners in that portion of the 1st charge, or indeed of their share in the murder of Gunga Singh, which, it is considered by the law officer, was committed by others concerned in the riot.

The principal objections raised by the defendants are firstly the contradictions, which have been dwelt upon by the Magistrate. Secondly, the impossibility of the recognition of so many as have been, from time to time, recognised by the witnesses, when there was nothing visible around but darkness, and such darkness as required even the aid of a lantern for the purpose of seeing where Mr. Solano lay, and thirdly the great importance attached by the Magistrate to Mr. Hart's evidence, which falsifies the statement of Mr. Solano, and those who have deposed on his behalf.

To illustrate these contradictions it has been urged by Joyperkash, that neither Gunga, Runglall, nor Sheodian Singh allow that they heard the pistol report, though Mr. Hart has deposed he fired his pistol twice. Considering that Gunga had received a deep wound in his knee which would at once have been pronounced mortal without an amputation ; that Runglall had been beaten ; that there was a crowd of some five hundred men facing them, men bent on destruction of different kinds, and that there were loud shouts proceeding from them, which might have been heard afar off, it does not seem to me at all wonderful that the report on which stress is laid, should not have been heard. Again it is pleaded that the persons named by Mr. Solano on the 3rd of November, and on the 29th of December, are not one and the same, and that he named no one on the 7th of November. To this as a contradiction no weight can be attached, for the Magistrate has used these words, in which I wholly agree, with regard to the statement of 3rd November " Mr. Solano says he does not recollect what he wrote at the thannah. Taking all the circumstances into consideration, I think it most improbable that in the state, in which he then was, he should have written the name of any one, at all events if he did so, he also wrote to this effect ' My senses are not now right that I can write my evidence correctly.' " And it is added by that officer that when Mr. Solano deposed before him on the 7th of November, he only recognised one person, or Joodur Singh, by his voice. But here again the Magistrate ought also to have recorded that which is further asserted by Mr. Solano and to be found with his deposition, viz. " that he could not recollect, at that time, whether he recognised any others, as his ideas were confused." A doubt seems to be thrown on the latter part of this assertion by the Magistrate in his letter of the 8th January, 1857, paragraph 11, No. 1, to the Commissioner of the division. But I see no ground for such doubt, more

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especially when the medical officer, who ought to be the competent witness has thus deposed, "I saw Mr. Solano on the morning of the 5th November. He was partially sensible at that time; but his mind wandered at intervals, and continued to do so for some days afterwards." The deposition then of 29th December, and which, strange to say, was taken at Mr. Solano's request, is the one on which we must rely, and in that we have the names of Teg Ally and Seosohye. Teg Ally having been released, much need not be said regarding him. But in the defence now set up stress is laid on the purity of Mr. Hart's deposition, and the Magistrate in his remarks considers that it refutes that portion of Mr. Solano's of 29th December, which relates to that person. How far this is the case must be partly judged, thus, "Teg Ally has said he was confined by Mr. Solano's order within the Seepah bungalow compound, and that he was taken out of the house after the riot, by Sheodian Singh, and made over to the darogah." I have quoted the Magistrate's remarks. Now Mr. Hart has deposed that "it is not correct; that Teg Ally never was placed in custody inside any house attached to the Seepah bungalow; that on the night of the 2nd November he remained at the factory of his own freewill, and that there was no restraint put upon him;" and the darogah, to quote still further," has asserted that he apprehended Teg Ally the same morning before sunrise at ten paces south of the thanah." Yet the Magistrate deems that his (Teg Ally's) statement has been, to a considerable extent, corroborated by Mr. Hart and the darogah. Further, it is urged that there is a contradiction as to the numbers of defendants named in each Court. The difference consists in the witnesses not being able to remember so many in the Sessions Court, and as numbers are given by many, there was nothing extremely unnatural in their speaking of those they recollected, village by village. On this head, the Magistrate has dwelt at some length, and has acted up to his opinion by acquitting twenty-one out of twenty-three persons. Still two have been committed by him on evidence, which is of wonderful sameness. Though he writes as if the evidence of Laldhary Singh and Rajkoomar was worthless, from their having recognised sixty-one and forty-two persons, yet these are made principal witnesses before the Sessions, and must therefore, to a certain extent, have been believed by him. On one point only must I consider their testimony worthless as well as that given by others on the same subject, viz. the beating of Mr. Solano on the head with a *gurasa* or battle-axe, not merely because the blows said to have been so dealt with that instrument, must have cleft the skull; but because the medical officer has sworn that the only severe incised head-wound was a spear-wound, while the others of a superficial nature appeared to have been caused by the grazing of a similar weapon. Consi.

dering the stillness of night; the light, which was thus shed abroad from the raging fire of a large building, sufficient, as has been described, to produce the light of day, the length of time occupied in the riot, upwards of half an hour, during which the tendency of the light must have been to increase in its strength, the position of the witnesses, who from fear and no power of escape, were obliged to be on the alert, that they themselves should come to no harm; the former knowledge, which they possessed of the greater body of those named by them, it is not to me surprising that they should have been enabled to speak of numbers, or under the circumstances to have recognised them. Mr. Hart's evidence is of no value on this point, and is I am constrained to say with regret, meagre indeed. His acts are described by himself as of those of a moment, and though it would appear, from his statement, that there must have been some light, for he said, "I fired into a group of seven or eight men, who receded, but they made a fresh attack on me, when I fired, turned round and made my escape;" yet there was no question put to him regarding the light at that time, or regarding many other points of importance, which this Court has had no power to clear up. If darkness had been visible, and nought else, how could the position or approach of these seven or eight men have been seen? The statement of the lantern too had, in truth, nothing to do with what is called the search for Mr. Solano, for the bungalow was burning fast, and about half burnt down when the police stood by him, throwing its light from the burning far and wide, and over all but a small portion of the dirt heap where Mr. Solano lay, and which was shadowed merely by the projection of the cow-shed. The lantern, as the darogah has deposed, was to show the way to the thannah.

As Runglall was not examined in the Sessions Court, his evidence carries no weight with it against those now concerned. Nor is it requisite to dwell upon the futile plea of enmity said to exist with Ukkur Singh. Joodur Singh, not Ukkur Singh, is shewn to have had the collections of Kominy, and to have been deprived of his collections in that village as well as his thesildarship of Belkurrah, therefore that enmity, or bad feeling should spring up in the breast of Joodur Singh, or of his brother, or his nephew, Joyperkash, towards Mr. Solano, is perhaps not surprising in consequence of the loss sustained.

Much more might be said, if it were necessary further to speak of doubts or shortcomings in the case. But I would hold, in concurrence with the law officer, that the testimony is all sufficient for purposes of conviction. It shews from the large number of men and the character of the agency employed, that the attack was deeply planned, and secretly carried out, with the full intent of committing murder; that the bungalow was set fire to by Sodafil, that Sheo and Sheosuhoy beat

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*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) There is no doubt that this violent outrage on Solano and his property, the wounding of Gunga Singh, and his death from that wounding, and the beating of Ramlall Singh, here charged, took place.

The question for our decision is, whether the statements of the prosecutors, and the testimony of the witnesses for the prosecution are sufficiently to be depended upon for the conviction of these two prisoners, or not.

It is strongly urged for the defence that each of those statements, and the testimony of each witness, must be taken as *wholly true*, or *wholly false*; and that it is not open to the Court, under any rule of judicial evidence, to select a portion of each man's statement or testimony, while rejecting the other portion of it; and to uphold a conviction on such a basis.

It is necessary to dispose of this plea at once; for though there is little or no variation in the evidence as to the actual facts of the occurrence, and to the prisoners under trial being amongst the rioters, yet the variations before the Police, the Magistrate and Sessions, as to the number of the rioters identified, and as to the details the witnesses have entered into, have, it is urged, rendered the evidence, as regards the prisoners, unworthy of credit.

If this plea were fully admitted, no conviction could here follow. But with reference to the practice of this Court, and to the character of evidence in this country, we think the plea, as regards the point of identity, is not admissible to the large extent contended for.

The practice recognized by this Court, as to identity, has been for the Presiding Judges to exercise their discretion in accepting such part of the evidence of a witness, as *they feel sure is true*; whether that result be arrived at by reason of the support given to that part of a witness's testimony which is thus accepted as true, by the testimony of other witnesses whose evidence is credited, or is on that specific point credible; or by the support derived on that point from strong circumstantial evidence in the case; or from both.

It may be added that the impression of the Magistrate and Sessions Judge, who have had the witnesses before them, of the truth of a portion of their evidence delivered before them, on such a subject, is also a matter to which consideration is due.

Thus, if the general tenor of a witness's statement as to the identity of individuals be credible, but he has varied in a part as to recognition of certain persons at different times, the variance would affect that part only; unless that variance were susceptible of satisfactory explanation, when of course the objection would not remain.

It is on this principle we proceed to decide on the guilt or innocence of the prisoners before us.

Those prisoners Nos. 8 and 9, are not mentioned in the statement made at the police by Solano on the 3rd November; but he at that time named seven persons as recognized by himself. He, however, then distinctly stated to the darogah, that his senses were so affected by his injuries, that he could not properly proceed with his statement. On the 7th November, Solano stated to the Magistrate that he recognized Joodur Singh by his voice; and on being asked, if he had recognized any others, he stated that his ideas were even at that time so confused, that he could not then recollect. On the 29th December Solano mentioned to the Magistrate that he wished to add to his statement of the 7th November. This was allowed, and he proceeded to state that on the 7th November he was almost senseless, and could not recall several names; but that he distinctly recognized prisoner No. 9, Teg Ally; Joodur Singh, Sudiput, Sheoburt Gwalla, Sheo Gwalla, and Thakoor Oja; although he could not say who struck him, as they were behind; but that he had plenty of light and time to recognize the abovenamed persons. Solano states in this deposition that he had not his senses when giving his statement to the police on the 3rd, and to the Magistrate on the 7th. The Magistrate has not recorded upon Solano's deposition of the 7th whether this appeared to be the case, or not. But the Civil Surgeon deposed at the Sessions, that he "saw Mr. Solano on the morning of the 5th idem, (November.) He was partially sensible at that time, but his mind wandered at intervals and continued

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to do so *for some days afterwards*." Solano before the Sessions Judge stated, that he had recognized the seven persons before mentioned.

The next prosecutor Runglall, who was wounded also, and who, there is no doubt, was at the bungalow with Solano, and saw the attack, mentioned on the 3rd November, to the police the names of *nine* persons whom he had recognized. The names of the prisoners Nos. 8 and 9 were two of these nine. He added that there were many others whom he did not know. Before the Magistrate and Sessions Judge this prosecutor consistently, and, as far as we can judge, we think, truthfully repeats (with one name varied in each Court, but that one not that of either of the prisoners) the same names, as those of the parties recognized by him. He distinctly states before the Sessions Judge that he did not see who struck Solano, as he (prosecutor) escaped; but that prisoner No. 9, beat him, (prosecutor.)

Gunga Singh, who was wounded, and is since dead, deposed to the police on the 3rd, and to the Magistrate on the 6th November, to Joodur and to *Seo* (*not saying Seo Suhai Gwalla*) striking him, prosecutor, and to Seo Singh, Bishennath, and Teg Ally being present. He distinctly stated that he did not know the others.

The statement of the prosecutor, Sheodyal Singh on the 2nd or 3rd November, (it is doubtful which) is that he recognized prisoners Nos. 8 and 9, and more than thirty others. This prosecutor stated to the Magistrate the names of these prisoners Nos. 8 and 9, and more than fifty others: and to the Sessions Judge that he did not recognize all there, but that he did prisoners Nos. 8 and 9; and more than twenty others.

Witness No. 1, mentioned to the police on the 4th November, and to the Magistrate\* and the Sessions Judge, the names of prisoners Nos. 8 and 9, and specified to the Magistrate and the Sessions Judge the parts they and others took in the attack, and his recognition of more than fifty others.

Witnesses Nos. 2, 3 and 4, mentioned specifically to the police on the 4th November, and subsequently to the Magistrate, and to the Sessions Judge the names of prisoners Nos. 8 and 9, the weapons they had, and the names of upwards of thirty other persons, with slight variations, as recognised by them.

Witness No. 5, mentioned to the police on the 4th November, and to the Magistrate and Sessions Judge, the prisoners Nos. 8 and 9, and nearly thirty others; and states in detail the part taken by some in assaulting Solano.

Witness No. 6, states on the 5th November to the police to the same effect; but names about forty-five persons before the Magistrate and Sessions Judge.

Witness No. 7, consistently, and, we think, truthfully, states

to the police and the Magistrate his recognition of the prisoners Nos. 8 and 9, and six others.

Witness No. 8, states that he recognized Joodur, Gunput and Shahmul, as they had all been in Solano's service.

Witness No. 9, states to the police, the Magistrate and the Sessions Judge, that Joodur gave the order to kill Solano, and Sodaseb fired the bungalow; that he knew no others, and ran off himself.

Hart states that he recognized no one; and on the first attack rushed out, fired his pistol, and went off in all haste to the thannah, which it appears was about three stones' throw off.

The depositions of the prosecutor, Runglall, and of the witness, Runglall No. 7, appear to us quite free from the objections of exaggerations and additions to which the rest of the evidence may be liable. We think this evidence proves the participation of prisoners, Nos. 8 and 9, in the attack.

We also think that as the prisoners Nos. 8 and 9, have been mentioned in the very first depositions of witnesses Nos. 1, 2, 3, 4, 5 and 6, that *part* of their depositions need not be rejected; inasmuch as it agrees with the statements of prosecutor, Runglall, and witness, Runglall, as to them, which statements we believe to be true.

The defence of the prisoners is not substantiated sufficiently to over-weigh the above evidence. The plea that Joyperkash is only twenty years old, and was found reading with his Moulvie when apprehended, is only noticed by the Court with a view to remark that if true, the facts are not incompatible with his presence in the riot.

The *alibi* of Sheosuhai Gwalla is stated by his witnesses to have been caused by his having gone to buy buffaloes; a cause he does not assign himself when he pleaded that *alibi* to the Magistrate.

We do not think it necessary to go into the further pleas urged by prisoners' counsel, for it will be seen that we have not relied at all on the statements of Solano, or Sheodyal Singh, or of the other witnesses Nos. 1, 2, 3, 4, 5, 6 and 9, except so far as we believe them to have stated truly in regard to the presence of the prisoners Nos. 8 and 9, that part of their statements being supported by Runglall, prosecutor, and Runglall, witness No. 7.

In regard to Hart's evidence, we think it will suffice to say that as he deposes that he at the very first fired his pistol into a crowd, and went straight to the thannah, he would not be in a position, (taking his statement as he makes it,) to recognize the rioters, who had not then commenced their attack on Solano.

We convict the prisoners Nos. 8 and 9, and sentence them, with reference to the very aggravated character of

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the outrage, to be imprisoned with labor and irons in transportation beyond seas for life, as recommended by the Sessions Judge.

We have been urged to consider in evidence the Magistrate's official letter to the Superintendent of Police, as indicative of the general detestation of the people of the district against Solano; and in support of a plea that the attack was really one in collusion with, and by his own people.

As we have come to our decision on that evidence in the Calendar which we consider sufficient, we have only to remark that we cannot hold that such letters, though they be on the record, can be treated as evidence; for, in the first place, the document is not proved; and in the second it contains the opinions of a Magistrate, *not* in his character of a committing officer *acting judicially* upon the evidence before him, but of a police officer *acting executively* upon information which may be quite out of the category of judicial evidence.

Referring, however, to the opinion of the Magistrate, acting *judicially as a committing officer*, which opinion is recorded by him in the proper head of the Calendar, we think it necessary to observe that the remarks appear to us not those of a committing officer weighing as dispassionately as he might have done, the evidence before him, but more those of a police officer arguing strongly for his own views, which may or may not be correct, relative to the character of one of the prosecutors.

We have further to observe that the delay in the intelligence of so gross an outrage reaching the Magistrate; the delay in recording the statements at the police, and forwarding them to the Magistrate, i. e. from 2nd to 5th November; and (to use the Magistrate's own words) "the facts of the prisoners having been taken to Belkurrah" (a residence of Solano's) without authority from the Magistrate, were each and all very improper.

We have to observe moreover that the conduct of the police in not being able to obtain information of the collection of so large a body of men, till the attack had been made,—the thannah being within three stones' throw of the place where that attack was made,—is discreditable.

It is urged by the Magistrate in his reasons for commitment that "if Messrs. Solano, Chardon and Hart, who were living amongst the people who are said to have committed this outrage, were all of them in ignorance of the plot that was being concocted to take the life of Mr. Salano, it is not a matter of surprise that the police should likewise have been unacquainted with what was about to occur."

We should have thought that if the Magistrate had considered the general principle and objects of the organization of a police, the inconsistency of such an observation would have

been apparent; indeed Section 4, Regulation XX. of 1817, states the duties and objects of the Police to be; "to prevent, as far as possible, the commission of all criminal offences; and to discover and apprehend offenders."

The weakness and inefficiency of the police at and after the attack, are equally lamentable.

In conclusion, we have to remark that in a case of this kind five days (apparently) should not have elapsed before the Magistrate himself reached the spot, a distance of 40 miles from where he was.

We desire that the Sessions Judge will forward a copy of these remarks to the Commissioner of the Division.

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Case of  
JOYPERKASH  
SINGH  
and another.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND JUMNA DOSS

*versus*

LEKHA SAHOO.

Patna.

CRIME CHARGED.—Fraud, in having knowingly and intentionally defrauded the firm of Dwarkanath and Deonath Suhay of goods valued at Rs. 1,225 by presenting two false *hoondees*, marked A. and B.

CRIME ESTABLISHED.—Fraud, in having knowingly and intentionally defrauded the firm of Dwarkanath and Deonath Suhay of goods valued at Rs. 1,225 by presenting two false *hoondees* marked A. and B.

Committing Officer.—Mr. J. M. Lewis, Officiating Magistrate of Patna.

Tried before Mr. J. N. Farquharson, Sessions Judge of Patna, on the 3rd October. 1856.

*Remarks by the Sessions Judge.*—Prisoner pleads not guilty. It is clearly proved by the evidence of the prosecutor Jumna Doss and witnesses Nos. 2, 3, 4 and 5, that the prisoner procured from the firm of Dwarkanath and Deonath Suhay, bankers and merchants of the city of Patna, four bales of cotton-twist valued at Rupees 1,225 on the false pretence of making payment by means of two *hoondees* produced by him and lodged with the firm; that these *hoondees* were not drawn by the Mirzapore firm, whose name they bear, is fully proved by the evidence of witness, No. 6. The prisoner (with other accomplices acquitted by the Sessions Court) was charged with the forgery, and being convicted by Sessions Judge, was sentenced to seven

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SAHOO.  
Prisoner convicted of fraud, having been previously acquitted by the N. A. of a separate charge of forgery.

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SAHOO.

years' imprisonment; this sentence was, however, reversed on appeal by the Nizamut Adawlut, that Court considering the evidence as to the actual forgery, defective. In acquitting the prisoner, however, on the charge of forgery, the Court observed that the fraud might still be brought against him, and hence the present charge. The story of the transaction is shortly this: one Pariaz Doss Mohunt, well known to the firm of Dwarkanath and Co., came to them with a *hoondee* purporting to be drawn by Kalee Shunkur and Bishunath Awastee of Mirzapore, on Jumna Doss and Jay Kishen Doss of Calcutta, in favor of one Shoomeree Sahoo and endorsed over by him to Puriaz, this *hoondee* was for 425 Rs. and 115 Rs. cash being advanced, it was after four days' delay sent to Calcutta for realization. Fifteen days after receipt of this *hoondee*, Puriaz came again with Lekha Sahoo, and on Puriaz's calling him his *chela* and vouching for his respectability the firm sold Lekha Sahoo four bales of cotton-twist valued at Rs. 1,225 taking from him in part payment two *hoondees* purporting to be drawn by Kalee Shunkur and Bishunath Awastee of Mirzapore on Jumna Doss and Jay Kissen Doss of Calcutta in favor of Lekha Sahoo, one for 401 the other for 805 Rupees, the latter alone he endorsed over to the firm, and, taking away the bales of cotton-twist, promised to come again and conclude a further purchase of spices and other articles. On the morning following this transaction, the *hoondee* sold to the firm by Puriaz was returned from Calcutta dishonored, thus raising suspicion against the other *hoondees*. Lekha Sahoo was searched for but he had absconded with the bales, he was eventually followed to Shaekhpooa, a town in the Monghyr district, and there apprehended with the goods. The prisoner's defence is, that he paid cash for the cotton-twist and bought, among other things from the firm of Dwarkanath, some salt about the price and quality of which the quarrel, leading to this accusation on part of prosecutor took place.

The witnesses for the defence prove nothing of this statement, deposing merely to the residence and former respectability of the prisoner.

The law officer gives in a verdict of guilty of the crime charged, in which I concur.

The prisoner Lekha Sahoo is convicted of fraud, in having on or about the 8th of August, 1855, knowingly and intentionally procured 1,225 Rupees worth of goods from the firm of Dwarkanath and Deonath Suhay, on the pretence of making payment by the two false *hoondees* produced in Court marked A. and B. and sentenced to three years' imprisonment with labor commutable to a fine of 150 Rupees payable within ten days.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley. It is clearly proved that the prisoner

did, intentionally and knowingly, defraud the house of Dwarkanath and Deonath of goods, valued at Rs. 1,225, by presenting two forged *hoondees*. The prisoner was previously tried for and convicted by the Sessions Judge of uttering a forged *hoondree*; but as the evidence then adduced was deemed by the Nizamut Adawlut insufficient to prove that the *hoondree* was forged, the prisoner was released on appeal to this Court: (Vide page 417, Nizamut Adawlut Reports, part I. of 1856.) It was then stated that a separate charge for fraud might be possible. The evidence of Seetaram, gomashtah of the firm of Bishunath and Kalee Shunkur of Mirzapore, has now been taken, and he deposes that the *hoondees*, issued by the prisoner, are forgeries. The prisoner acquitted before of uttering the forgery, has now been tried and convicted by the Sessions Judge on the charge of fraud. We see no grounds for interfering with this conviction, and reject the appeal, the allegations of which are in no way proved by the witnesses called by the appellant.

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CASE OF  
LEKHA  
SAHOO.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND SHUNKER LALL

*versus*

BOOLAKEE.

Patna.

CRIME CHARGED.—Wounding Shunker Lall prosecutor with intent to murder.

1857.

CRIME ESTABLISHED.—The same as crime charged.

May 16.

Committing Officer.—Moulvy Moula Buksh, Deputy Magistrate of Patna.

CASE OF  
BOOLAKEE.

Tried before Mr. R. N. Farquharson, Sessions Judge of Patna, on the 27th October, 1856.

*Remarks by the Sessions Judge.*—Prisoner pleads *not guilty*. The prosecutor says he was returning from the Deputy Magistrate's cutcherry about 5 P. M. when Boolakee and another, named Tilloo, attacked him and wounded him severely with swords on the head and right hand; that they were incited thereto by a decree, he, Shunker, had procured against some of Boolakee's female relatives. Immediately on the occurrence Shunker's evidence was taken by the Deputy Magistrate, wherein he named Boolakee and Tilloo as having attacked him with swords, and said there were with them two other men with *lattees*, whose names he did not know. This was on the 19th of July; on the 22nd idem, his deposition was again taken

Appeal re-  
jected; the  
pleas not be-  
ing substan-  
tiated, and the  
evidence for  
the prosecu-  
tion being suf-  
ficient. Re-  
marks on cer-  
tain proceed-  
ings of the De-  
puty Magis-  
trate and po-  
lice in the  
case.



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in hospital by the darogah, when he named Sheobuksh as setting on and encouraging Boolakee and Tilloo to attack him.

Shunker Mallee, witness No. 1, is a servant of the prosecutor and was accompanying him when he was attacked, he ran off and reported to the thannah at the time that Sheobuksh Singh was on the spot encouraging the attack, can assign no motive for his so encouraging it, beyond his, Boolakee's master. Boolakee's enmity arose from a claim prosecutor had against his, Boolakee's, aunt and some injury occurring to property attached on account of this claim. Jhouree, witness No. 2, was passing at the time and saw the attack and Sheobuksh standing by encouraging it, there is some discrepancy between his several depositions as to his having himself seen Sheobuksh on the spot.

Juggernath, witness No. 3, says he saw the attack by Boolakee and Tilloo, and also saw Sheobuksh on the spot, but he was calling out, Seize him, seize him, and not encouraging the attack, does not know to whom the "seize him," applied.

Mukoond, witness No. 4, saw the attack by Boolakee and saw Sheobuksh there, and heard him call out *mar, mar*.

Narain, witness No. 5, saw the attack by Boolakee and Tilloo, and saw Boolakee running off with a broken sword in his hand, attempted to seize him, but Tilloo and another prevented him, did not see Sheobuksh on the spot.

Somera witness No. 6, saw the attack by Boolakee and Tilloo, and saw Sheobuksh on the spot and heard him call out *mar*. Before the Deputy Magistrate said Sheobuksh was there, but did not say anything; when asked to explain the discrepancy, declares he said the same before the Deputy Magistrate he says here, attributes the attack to enmity arising from prosecutor having an intrigue with Boolakee's aunt.

The Sub-Assistant Surgeon, witness No. 7, deposes to having examined the wounds of Shunker Lall on the night of their occurrence, there were in all ten wounds, small and great, on both hands and head, varying from one to three inches in length, those on the head, if a little deeper, might have penetrated the brain and caused death.

Choonee Lall darogah, witness No. 8, deposes to both Boolakee and Sheobuksh having evaded apprehension. Boolakee for nearly two months, Sheobuksh for some days, and that when traced to their hiding-places they both attempted to escape. He further deposes to Shunker Mallee, witness No. 1, not having implicated Sheobuksh, prisoner No. 19, in his first statement at the thannah made on the evening of the attack.

Boolakee, prisoner No. 18, states that Shunker, prosecutor, had intrigued with his aunt and taken her away with all her jewels; that Shunker had a case against her in the Civil Court, to which she is a consenting party, in order that he may get

possession of her property as well as herself. His grandmother was an objector in the case, and he, Boolakee, had the conduct of it for her, and that Shunker Lall therefore threatened to get up a case against him, and to take his house also from him, and had once beaten his grandmother, who complained at the thannah. Shunker Lall had tried to get up a false complaint of theft, money and jewels against him, Boolakee, but afterwards gave in a *razeenamah*. He, Boolakee, objects to the evidence of Narain, witness No. 5, as a *budmash*. Sheobuksh Singh, prisoner No. 19, says he has been in constant friendship with Shunker Lall for forty years; that he deals with Shunker for wood always; that he has no concern with Boolakee; that his own cousin Soudagur Rai is at enmity with him and has often tried to get up cases against him; that Soudagur Rai hearing of this attack on Shunker went to him in hospital and got him to include his name in the charge; that he was present at the Deputy Magistrate's the day of the occurrence, and remained there while the Deputy Magistrate went to the spot where Shunker Lall had been attacked to make enquiries, and *sulamed* to him when he returned.

Boolakee's witnesses from Nos. 1 to 9, depose generally to his not being concerned in the attack on Shunker Lall, to Shunker Lall having carried off Boolakee's aunt and got up a case against her for appropriation of her property, and of his having complained against Boolakee for theft and afterwards given in a *razeenamah*. Some of them try to prove an *alibi*.

The witnesses for Sheobuksh, Nos. 6 and 7, both foudary chuprasses, depose to Sheobuksh being in the Deputy Magistrate's cutcherry at the time the attack on Shunker Lall took place, and to his having remained there till after Shunker Lall's evidence had been taken, they further depose to Shunker Lall having been quite collected when he gave his evidence before the Deputy Magistrate.

The law officer brings in a verdict of guilty against Boolakee, prisoner No. 18, of the crime charged in the calendar, on violent presumption. His verdict with regard to Sheobuksh Singh is acquittal. In both of which, I concur.

The evidence against Boolakee is complete and convincing, the sword, judging from the piece produced in Court, was sharp and weighty, and the blows on the head cutting through a turban and two under caps, show that the will to inflict permanent injury was not wanting, the witnesses for the defence even show sufficient cause and motive for the murderous attack, his long evasion of justice and final attempt to escape confirm the certainty of his guilt. I convict him of wounding Shunker Lall with intent to murder, and sentence him to twelve years' imprisonment with labor in irons.

The evidence against Sheobuksh is defective from the begin-

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ning, prosecutor not naming him at first before the Deputy Magistrate. The discrepancy of the eye-witnesses, the evidence of the two thannah burkundazes Nos. 6 and 7, and a total want of motive or inducement to encourage or in any way promote the attack on Shunker Lall, frees him, in my mind, from all suspicion of complicity. I acquit him and order his immediate release; I do not think the Deputy Magistrate was in any way justified in committing him to the Sessions.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley). The appeal is to the effect that eight witnesses have proved that appellant was not present at the occurrence, and that the evidence for the prosecution has been bought over.

We have perused the record, and consider that it is clearly proved by the eye-witnesses that the prisoner struck prosecutor the blows with a sword, and that those blows were of a very severe character. The prisoner's defence as to *alibi*, and as to the evidence for the prosecution having been bought over, is in no way substantiated.

We reject the appeal.

We observe that the Deputy Magistrate took prosecutor's first statement on the 19th July, the day of the occurrence; yet he sent the darogah at the request of the latter to take it again in the hospital on the 22nd. If it was requisite to be taken again, the Deputy Magistrate should have done it himself. In this case the darogah's proceedings in this matter appear to us very unsatisfactory.

The Sessions Judge should have marked as examined the names of witnesses who had been examined before him.—(Vide C. O. of 25th Oct. 1844, No. 187, page 381, Carrau's Edition.)

## PRESENT :

Tirhoot.

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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May 16.

Case of  
TOKH HAJAM.

GOVERNMENT AND GYADEEN GOLEDAR

*versus*

TOKH HAJAM.

Prisoner convicted of burglary. Remarks on leniency of punishment, with reference to prisoner's character.

CRIME CHARGED.—1st count, burglary and theft of a *lotah*, &c. valued at 1-6-6; 2nd count, knowingly receiving and being in possession of the whole of the said stolen property valued at 1-6-6.

The prisoner having been three times previously convicted of burglary and theft.

CRIME ESTABLISHED—Burglary and theft.

Committing Officer.—Mr. H. C. Raikes, Joint-Magistrate of Chumparun.

. 1857.

May 16.

Tried before the Hon'ble R. Forbes, Sessions Judge of Tirhoot, on the 7th January, 1857.

Case of  
ТОКН ИАЖАМ.

*Remarks by the Sessions Judge.*—The prisoner effected a burglarious entrance into the prosecutor's house cutting a hole in the matted wall of the apartment in which the latter was asleep, and was retreating with a *lotah* and a *kutoorah* through the aperture which he had made, when the jingling of the vessels awoke the prosecutor, who getting up, seized the prisoner and at the same time, gave the alarm. This brought to the spot the witnesses Nos. 1 and 2, neighbours of the prosecutor, who saw the prisoner secured with the above property in his possession, the prisoner being an old offender, thrice before convicted and punished (once in the Sessions Court) for similar crimes.

Both before the darogah and in the foudary Court, the prisoner confessed his guilt before attesting witnesses; but in this Court pleaded *not guilty*; but as he had no witnesses to substantiate his defence of his confession having been extorted from him by the darogah, besides that he confessed before the Joint-Magistrate and the case was otherwise clear against him; I agreed with the law officer in convicting him of the 1st count in the calendar and have sentenced him, with reference to his previous convictions to the punishment stated below.

*Sentence passed by the lower Court.*—To be imprisoned for the period of seven years and two years in lieu of corporal punishment, in all nine years, with labor in irons and in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has been convicted, on his own voluntary confessions made to the police and to the Magistrate, and on the evidence of the witnesses, by all which his guilt is clearly proved. We see no grounds for interfering with the orders of the Sessions Judge; but, with reference to the prisoner's previous convictions, and his being apparently an irreclaimable thief, we think the sentence passed by the Sessions Judge too lenient. Appeal rejected.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND MR. W. SIDLEY

*versus*

RAMMOHUN ROY.

Moorsheda-  
bad.

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May 18.

Case of  
RAMMOHUN  
ROY.

Prisoner re-  
leased; the  
charge of em-  
bezzlement not  
being accord-  
ing to Section  
11, Act XIII.  
of 1850, and  
the charges of  
forgery and  
theft not be-  
ing proved.

CRIME CHARGED.—1st count, forgery in having fraudulently forged or caused to be forged the following alterations in the *amdanee* book of raw silk for 1856 of the Cossimbazar filature, belonging to Messrs. J. Lyall and Company, and to Mr. James Lyall, viz. In page 4, altering the item of credit, dated 20th February, from 14 seers, to 1 maund, 14 seers. In page 6, altering the item of credit, dated 5th May, from 1 maund, 38 seers, 14 chittacks to 2 maunds, 38 seers, 14 chittacks. In page 11, altering the item of credit, dated 27th September, from 1 maund, 20 seers, 6 chittacks to 2 maunds, 20 seers, 6 chittacks; 2nd count, while being at the time in the employment of Messrs. J. Lyall and Company and Mr. James Lyall as *gomashtah*, embezzling the sum of Company's Rupees 1,474-14-9 value of the said silk, the property of the said Messrs. J. Lyall and Company, and of Mr. James Lyall and appropriating it to his own purposes; 3rd count, breach of trust under Act XIII. of 1850, that while being employed as servant (*gomashtah*) of Messrs. J. Lyall and Company, and Mr. James Lyall, he stole a sum of 1,474-14-9, the value of the said silk, the property of the said parties, the nature of the breach of trust being that as *gomashtah* he received advances for the purchase of cocoons to make into silk, and that he delivered 3 maunds of silk less than he had received the money for, and thus fraudulently stole the value; 4th count, breach of trust under Act XIII. of 1850, in that having received from the prosecutor the sum of 1,474-14-9 on account of the above silk the property of the said Messrs. J. Lyall and Company, and of Mr. James Lyall, he fraudulently embezzled the same, the prisoner being at the time servant as *gomashtah* of the said Messrs. J. Lyall and Company, and of Mr. James Lyall, the nature of the breach of trust being that as *gomashtah*, he received advances for the purchase of cocoons to make into silk, and that he delivered 3 maunds of silk less than he had received the money for, and thus fraudulently embezzled the value.

Committing Officer.—Baboo Obhoychurn Bose, Deputy Magistrate under the Commissioner for the suppression of dacoity at Moorshedabad.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 28th March, 1857

1857.

*Remarks by the Officiating Sessions Judge.*—This case is referred to the superior Court in consequence of a difference of opinion between the law officer and me, and the circumstances of the case are as follows :—

May 18.

Case of  
RAMMOHUN  
Roy.

Mr. G. W. Sidley is manager of the silk filatures of Messrs. J. Lyall and Company, and of Mr. James Lyall, and the prisoner was *gomashtah* of the Cossimbazar filature, the property of these parties, and was their servant, and by virtue of his office, as *gomashtah*, he received large sums of money for the purchase of cocoons for the two silk bunds extending from November 1855 to February 1856, and from February 1856 to October 1856; at the close of the last bund after despatching the silk in the godown to Calcutta, Mr. Sidley discovered that there was a deficiency of some maunds of raw silk, and on making investigation it appeared that the *amdanee* book had been altered as stated in the 1st charge, and that in the *nikassee* papers filed by the prisoner and passed by Mr. Sidley, the prisoner had received credit for 29 maunds, 12 seers, 8 chittacks factory weight of silk, whereas he had delivered only 28 maunds, 12 seers, 8 chittacks factory weight of silk for the first bund, and that for the second bund he had received credit for 38 maunds, 37 seers, 9 chittacks factory weight of silk, whereas he had delivered only 36 maunds, 37 seers, 9 chittacks factory weight of silk, thus defrauding the owner of the value of those factory maunds of silk, for which he had received the money, that value amounting, according to Mr. Sidley's evidence to 1,377 Rupees, 12 annas, 9 pie.

That the alterations did occur are apparent from the *amdanee* book, which has been sworn to, and are borne out by the *chellans*, and receipts marked A. B. D. and E. F. also sworn to, and it is proved from the evidence of Mr. Sidley and Mr. Fox (witness No. 4.) that on the 20th February the prisoner sent only 14 seers of silk, on the 5th May, 1 maund, 38 seers, 14 chittacks, and on the 27th September 1 maund, 20 seers, 6 chittacks, and indeed it is acknowledged by the prisoner, as he files a book purporting to be a memorandum of all the silk he supplied in those two bunds, and the above quantities are set down on those dates in that book; the prisoner acknowledges also the correctness of the two *nikassee jumma* papers for those two bunds filed by Mr. Sidley, and also acknowledges that he received all the money stated in those papers as having been paid to him.

By those *nikassee jumma* papers (marked C. and G.) which are sworn to, and as above are acknowledged to be correct, by the prisoner, it is stated that up to the end of February 1856, the prisoner had delivered 29 maunds, 12 seers, 8 chittacks,

1857. and to the end of October 1856, he had delivered 38 maunds, 37 seers, 9 chittacks more of silk, and this fact also the prisoner acknowledges by the above quoted book he has filed; Mr. Sidley declares, and his evidence proves, that the prisoner delivered 3 maunds less than that amount, and that the amount was made to appear correct by the fraudulent alterations charged, and which he says must have been by the connivance or influence of this prisoner; the prisoner pleads *not guilty*, and acknowledging that he delivered, on the dates noted in the charge the less amount of silk specified, declares that he delivered a surplus of silk on three other dates, viz. on the 26th December, 1855, 1 maund,  $\frac{1}{2}$  seer, on the 6th May, 1 maund,  $\frac{1}{2}$  seer, and on the 1st July, 1 maund,  $1\frac{1}{2}$  seer, and which Mr. Sidley has not inserted in his accounts, and that therefore the 3 maunds, apparently deficient in the *amdanee* book, were really not deficient, as he had delivered the above 3 maunds,  $2\frac{1}{2}$  seers, in excess of what was debited to him in the *amdanee* book. This simplifies the case very much as if the prisoner cannot prove this excess delivery of silk, Mr. Sidley's charge will be substantiated.

Mr. Sidley for the purpose of disproving this excess delivery spoken of by the prisoner, points to the daily reports filed by the prisoner (which he has sworn he has filed as he received them from the prisoner, and those of the 28th April, to 4th May, inclusive, have also been sworn to have been sent by the prisoner, by Govindo sherishtadar, witness No. 2,) and to the *chellan* (marked D) of the 5th May, (sworn to by that witness Govindo) and to the *amdanee* book (sworn to by himself and Modoo Goshamee witness No. 1.) By these papers I find that the daily report for 24th December, shews no silk was in store with the prisoner, the daily report for 25th December is not filed, but the daily report for 26th December, shews that the prisoner had on that

|                                   | Maunds. | Seers. | Chittacks.      |
|-----------------------------------|---------|--------|-----------------|
| Day silk amounting to, .....      | 1       | 2      | $14\frac{1}{2}$ |
| The prisoner made that day, ..... | 0       | 23     | $3\frac{1}{4}$  |
| Thus in store on 27th, ...        | 1       | 26     | $1\frac{3}{4}$  |
| He made on the 27th, .....        | 0       | 21     | $12\frac{1}{2}$ |
| In store on 28th, .....           | 2       | 7      | $14\frac{1}{2}$ |
| Made on 28th, .....               | 0       | 21     | 6               |
| In store on 29th, .....           | 2       | 29     | $4\frac{1}{2}$  |

And the *amdanee* book shews that on the 29th December the prisoner delivered 2 maunds 32 seers 11 chittacks of silk, so that the alleged delivery of an excess of 1 maund  $\frac{1}{2}$  seer on the 26th December is plainly false.

|                                                                              | Maunds. | Seers. | Chittacks.       | 1857.                       |
|------------------------------------------------------------------------------|---------|--------|------------------|-----------------------------|
| Again the daily report for the 1st May<br>shews in store with prisoner,..... | 0       | 0      | 0                | May 18.                     |
| Made on the 1st May, .....                                                   | 0       | 27     | 3 $\frac{1}{4}$  | Case of<br>RAMMOHUN<br>ROY. |
| In store on 2nd May,.....                                                    | 0       | 27     | 3 $\frac{1}{4}$  |                             |
| Made on 2nd May,.....                                                        | 0       | 0      | 0                |                             |
| In store on 3rd, .....                                                       | 0       | 27     | 3 $\frac{1}{4}$  |                             |
| Made on 3rd May,.....                                                        | 0       | 22     | 6                |                             |
| In store on 4th, .....                                                       | 1       | 9      | 9 $\frac{1}{4}$  |                             |
| Made on 4th May,.....                                                        | 0       | 25     | 5 $\frac{1}{4}$  |                             |
| In store on 5th, .....                                                       | 1       | 34     | 15 $\frac{1}{4}$ |                             |

The daily report from the 5th May, shews that the prisoner had no silk in store that day, and his *chellan* (as above sworn to) of that day (marked D) shews that he sent on the 5th May, 1 maund, 38 seers, 14 chittacks, and as by the daily report of 6th May, it is apparent that on that day he had in store only the silk made the previous day, viz. 30 seers, 13 $\frac{1}{4}$  chittacks, it was impossible for the prisoner to have sent on the 6th May, the 1 maund, 1 $\frac{1}{2}$  seer, he says he did and the *amdanee* book shews he sent nothing on that date, and therefore the alleged delivery of that excess is false.

Again, the daily report of the 1st July, shews silk

|                               | M. | S. | C.               |
|-------------------------------|----|----|------------------|
| In store with prisoner, ..... | 0  | 32 | 11 $\frac{1}{4}$ |
| Made on 1st July,.....        | 0  | 12 | 8 $\frac{1}{4}$  |
| In store on end of 1st July,  | 1  | 5  | 4 $\frac{1}{4}$  |

the *amdanee* book shews that on the 2nd July, the prisoner delivered 1 maund, 3 seers, and the daily report shews that on the 2nd July, the prisoner had no silk in store, and the *amdanee* book also shews that no silk was delivered on the 1st July, and therefore the delivery of the alleged excess of 1 maund, 1 $\frac{1}{2}$  seer, on the 1st July, is false.

The prisoner filed certain papers and books to prove his statement, but produced no witnesses to the correctness of those books and papers, and the witnesses he did produce to certify to the alleged delivery have signally failed in proving it, I am of opinion therefore that it is proved by the evidence that the prisoner received the full value for 29 maunds, 12 seers, 8 chittacks, and for 38 maunds, 37 seers, 9 chittacks, of silk, and that he delivered 3 maunds of silk less than that quantity, and appropriated their value, to his own purposes, and as it is shewn in



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evidence, that the prisoner is the party, who would benefit by the fraudulent alterations in the *amdanee* book, I convict the prisoner, Rammohun Roy, on violent presumption, of having caused the alterations charged to be forged, of having embezzled the value of the 3 maunds of silk he failed to deliver, amounting to Company's Rupees 1,377-12-9, and of having committed a breach of trust under Act XIII. of 1850, by embezzling that sum of Rupees 1,377-12-9 entrusted to him by virtue of his office as gomastah for the purchase of silk, and recommend that he be imprisoned for (5) five years with hard labor in irons, and that he be sentenced to pay a fine under Act XVI. of 1850 of Company's Rupees 1,377-12-9 for the benefit of his employers.

The prisoner was defended by two vakeels, who attempted to throw discredit on the papers and documents filed by Mr. Sidley, but it appears that he was directed by the Deputy Magistrate on the 4th March to file those documents, and that he filed them on the 5th idem, while the prisoner relinquishing his first defence, pleaded on the 9th idem, the defence he has now pleaded in this Court, I therefore see no grounds whatever for distrusting the documents filed by Mr. Sidley, and certified to as above stated. It is also pleaded for the prisoner that in accordance with the case of Gungadhur Sircar, decided on the 31st March, 1853, by the Nizamut Adawlut, and by Section 11 of Act XIII. of 1850, the charge of breach of trust cannot stand, as the alleged transactions embrace a period of more than six months, but I am of opinion that this plea will not assist the prisoner, as though he is charged with having caused distinct acts of forgery (to which that Section does not apply) yet he is not charged with distinct acts of embezzlement, but with one act of embezzlement, as the accounts were not made up till the end of October, 1856, and it was not till *that* time that the embezzlement could have taken place, as it was the taking of the money of the excess silk charged that constituted the embezzlement, and this did not occur till the passing of the *nikassee jumma* papers.

The *futwa* of the law officer declares that there is a suspicion that the prisoner gained considerable profit by the alterations, but that there was no proof against him, and that he was therefore entitled to his acquittal. I disagree with this *futwa* in toto.

*Remarks by the Nizamut Adawlut* — (Present: Messrs. G. Loch and H. V. Bayley.) The prisoner is charged with forgery in having fraudulently forged or caused to be forged three alterations in the *amdanee* or delivery-book. But there is no direct or sufficient proof to support *this* charge. The witnesses for the prosecution depose that the alterations could only have been for the prisoner's benefit, and that of the godown Sircar, (absconded,) Benimadhub. On the other hand the

same witnesses depose that the godown Sircar alone had charge of the *amdance* book; and that it was in no way one which would, in the ordinary course of business, be at the prisoner's command. The Sessions Judge convicts "the prisoner on violent presumption of having caused the alterations charged, to be forged." We are of opinion that the presumption in such a case should be so violent as to leave no other reasonable conclusion than that the prisoner caused the alterations. And that with the facts before stated no such violent presumption is to be found.

Another charge is of theft or larceny, which is not proved at all.

The remaining charge is embezzlement; and the Sessions Judge convicts of that, apparently under Act XIII. of 1850.

We think it unnecessary to enter into the merits of this charge, as it has been brought contrary to Section XI of the Act.

That Section provides one charge to be brought for any number of Acts of embezzlement, committed within six calendar months from the first to the last of such acts.

The embezzlement charged in this case relates to two periods, viz. one, a period antecedent to the 1st of February, 1856, and another a period between that date and October 1856.

The alleged embezzlement was not discovered till after the accounts of the silk bunds, extending from November 1855, to February 1856, and from February 1856 to October of that year, had been closed, and passed as correct, under the name of *Junma nicassee*. The English ledger, contains almost a transcript of those accounts, and putting to debit of prisoner the total balance (2,401 rupees) with which the last of these *Junma nicassee* accounts closed against him. These 2,401 rupees are subsequently accounted for to prisoner's *credit* in that ledger.

It is impossible to find proved by the record on what exact dates the acts of embezzlement took place. But the period embraced in the charge extends from a time antecedent to February 1856, when the first *bund* had been closed, to October 1856, when the second was so; i. e. a period exceeding six months.

We are of opinion that, whether under the terms of the law cited a charge for embezzlement for the period embraced in one or other of the *bunds* be maintained or not, yet the prosecutor cannot include, in one charge, as he has done in this case, acts of embezzlement extending *beyond six months*.

We therefore quash the commitment, and the Sessions Judge's proceedings, as illegal; and order the prisoner to be immediately released.

We direct the Sessions Judge to require the Magistrate always to proceed strictly in accordance with the provisions of

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|                             |                                                                                                                                                                                             |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1857.                       | Section XI as above indicated. With this view the attention of the Magistrate and Sessions Judge is particularly required to Gungadhur Sircar's case. N. A. Reports 1853, part 1, page 390. |
| May 18.                     |                                                                                                                                                                                             |
| Case of<br>RAMMOHUN<br>ROY. | We take the occasion to remark that we do not admit Counsel's plea that a closed account absolutely bars a charge for embezzlement.                                                         |

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Dinagepore.

SAYBUKTHOOLLA AND ANOTHER.

|                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1857.                                                                                                        | CRIME CHARGED.—1st count, forgery in having inserted the name of Banoo chowkeedar and rupees 11 in the third leaf of the <i>jumma wassil bakee</i> papers of the year 1260 of mouza Prannathpore, below other names and above the total of the first column after the account had been made up; 2nd count, uttering the above forged <i>jumma wassil bakee</i> papers, knowing them to have been forged; 3rd count, accessory to the above both before and after the fact; 4th count, fraudulently inserting the name of Banoo chowkeedar in the above <i>jumma wassil bakee</i> papers of the year 1260 of mouza Prannathpore after the account had been made up with a view to benefit himself thereby; 5th count, privity to the above. |
| May 18.                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Case of<br>SAYBUK-<br>THOOLLA<br>and another.                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Prisoner<br>convicted of<br>uttering forged<br><i>jumma<br/>wassil bakees</i> ,<br>with guilty<br>knowledge. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

CRIME ESTABLISHED.—No. 6, uttering the forged *jumma wassil bakee* papers of the year 1260 of mouza Prannathpore, knowing them to have been forged, and, No. 7, forgery, in having inserted the name of Banoo chowkeedar and rupees 11, in the third leaf of the *jumma wassil bakee* papers of the year 1260 of mouza Prannathpore, below other names and above the total of the first column after the account had been made up.

Committing Officer.—Mr. T. E. Ravenshaw, Magistrate of Dinagepore.

Tried before Mr. J. Grant, Sessions Judge of Dinagepore, on the 11th August, 1856.

*Remarks by the Sessions Judge.*—The prisoner Saybukthoolla was farmer of the town of Dinagepore and the other prisoner his mohurrir. The origin of this case appears to have been enmity on the part of the farmer to a chowkeedar, whose petition for arrears due to him was the cause of the farmer being

fined for contumacy and abuse of a burkundaz sent to demand payment. A suit for arrears of rent was instituted against the chowkeedar with a *jumma wassil bakee* in which the chowkeedar's name was inserted and a fresh total written at the bottom. The document had previously been filed in a *moonsiff* without the chowkeedar's name or *jumma* and received back by the former. The mohurrir allows that the addition was written by him, and the farmer, that he filed the document with the addition made by his order, and both plead that the chowkeedar's name and *jumma* were omitted by mistake when the document was prepared and subsequently inserted on the mistake being discovered. The defence is a complete failure being refuted by papers furnished by the farmer to his zemindar, by sum total of the document itself and by the evidence of witnesses to the chowkeedar's not having rented any land from the farmer. The *futua* of the law officer convicted the prisoners, the mohurrir on the 1st count, and the farmer on the 2nd count, in which I concurred.

*Sentence passed by the lower Court.*—Each to be imprisoned with labor and irons No. 6, for five (5) years and No. (7) for three (3) years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Counsel for the prisoners urges that as *no forgery* has taken place, the prisoner, appellant, cannot be convicted on the charge of *uttering* a forged document. He urges too that as the accounts, i. e. *jumma wassil bakee* papers, on which the charge is based were written by the prisoner No. 7, and were not copied from those sent to the *raj-baree*, but were a duplicate set, and the insertion of the name of Banoo chowkeedar was made by prisoner No. 7, in correction of an omission in the accounts filed by the appellant, and without his authority or knowledge, no forgery has been committed, because the correction of an account by the writer of that account cannot be considered a forgery. He adds that admitting, for argument's sake, that a forgery had been committed, it could not be shewn that the appellant filed the papers with any guilty knowledge or intention, but filed them as he received them from the prisoner No. 7; while the prisoner No. 7, admits that he altered the account of his own authority, and neither received instructions from the appellant, nor told him of the insertion; that the filing of these accounts would not, therefore, under these circumstances, be a crime. Lastly, the Counsel urges that there is no proof, beyond the statement of Banoo chowkeedar, that there was any ill-will between him and the appellant; and it is not improbable that the Putwary prisoner, No. 7, might, to serve some purpose of his own, or to gratify his spite against Banoo, have made the insertion in the account, for which, however, the appellant was, in no respect

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and another.

responsible. The Counsel adds that the incorrect addition would at once lead to detection, which would not have been the case, if fraud was contemplated; and that in fact there is no proof, and but little presumption of his client being accessory or privy to the alteration in question; and thus that appellant could not be convicted on any of the counts.

We observe that *two sets* of *jumma wassil bakce* accounts were prepared; *one* for deposit in the zemindar's office, and sent to the *rajbaree*; the *other* for the use of the farmer, appellant, and kept by the putwaree, prisoner No. 7. In the account for 1259 and 1260, sent to the *rajbaree*, the name of Banoo chowkeedar does not appear; but in the duplicate for 1260, B. S. filed by the appellant in the summary suit instituted by him against Banoo, the name of Banoo has been inserted, below the names of all the other ryots, as paying a jumma of Rs. 11. No alteration has been made in the total of that page, which, had there been a *bonâ fide* alteration of the account as pleaded by the appellant, must have been made; and the correction would have been carried on throughout. The absence, however, of Banoo's name from the *rajbaree* copy of the accounts of 1259, and subsequent years, and its insertion in that of 1260, *filed by appellant*, clearly show a fraudulent intent.

It is urged by the Counsel for the appellant that the alteration in the account was made by the writer of that account, and itself does not amount to forgery, though it might be considered fraudulent. We have to observe that by Clause 3, Section 14, Regulation II. 1807, forgery is defined to be, all *fraudulent and injurious fabrications or alterations* of written deeds or of *written* or printed *papers of whatever description*. The alterations, therefore, in the accounts filed by the appellant evidently are comprised in the above definition of forgery.

As regards the plea that the appellant was not privy to the forgery, and did not issue the account with any guilty knowledge or fraudulent intent, it may be observed that the plea of Counsel, throwing the whole blame on prisoner No. 7, as having made the alteration on account of some ill-will he bore to Banoo Chowkeedar, is unsupported by any proof; while the records of the Magistrate's Court corroborate the evidence given by Banoo; and shew that the appellant was fined for contumacy as stated by that witness; and it is impossible to suppose that the prisoner No 7, without any object of his own to serve, and in opposition to the accounts heretofore furnished by him to the *rajbaree*, should, of his own authority, make an alteration, from which he could derive no benefit. The only reasonable conclusion then that the Court can come to, is that the alteration was made by order or consent of the appellant, and that he has been rightly convicted on the 2nd count. We therefore reject the appeal.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND RAMSOONDER MALLI

Tipperah.

*versus*

1857.

MAIENUDDIN ALIAS MALLI BHOOPYEAH (No. 15.)  
AMJAD (No. 16,) JOYUDDIN (No. 17.) BUCKSH  
ALLY (No. 18,) AND AMJAD 2ND (No. 8.)

May 19.

Case of  
MAIENUDDIN  
alias MALLI  
BHOOPYEAH  
and others.

CRIME CHARGED.—Culpable homicide of the prosecutor's brother, Nobokishore *alias* Nayah Malli.

CRIME ESTABLISHED.—Culpable homicide of the prosecutor's brother, Nobokishore *alias* Nayah Malli.

Committing Officer.—Mr. F. B. Simson, Officiating Joint-Magistrate of Noacally.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah, on the 12th November, 1856.

Prisoners convicted. Pleas in appeal of *alibi*, and of their witnesses not being called, were in no way substantiated.

*Remarks by the Sessions Judge.*—The prisoner, Maienuddin, was formerly tenant of some land belonging to one Gokool Moonshée, who ousted him last year for non-payment of rent and put the prosecutor in possession in his place. His fellow-prisoners are his two sons, his brother, and the father-in-law of one of the sons, and the deceased was the prosecutor's brother.

Remarks on medical evidence and attested copy of it.

On the 28th August last, the prosecutor, the deceased, and some neighbours, on their way to plant rice, passed by land in the occupancy of the defendants. The prisoner Maienuddin, or

- No. 1, Jugul Malli,  
" 2, Tarachand,  
" 3, Shadunundo Malli.

Amjad, and the deceased Nobokishore Malli, appear to have commenced abusing each other, when the remaining prisoners running up with *lattees* beat the prosecutor and his party, the deceased receiving a severe blow on the neck, which caused partial dislocation of the vertebræ and produced immediate concussion of the brain, which lasted until the 8th of September, that is to say, until the 13th day after the injury was received, when he expired in hospital. Intermediately he was in a state of total insensibility and sank at last from inanition in consequence of the impossibility of administering food to him.

Doctor Davis described the cause of death in the terms I have already used. The prisoners, Maienuddin (No. 15.) and

No. 4, H. M. Davis, Esquire,  
C. A. Surgeon.

Amjad (No. 16,) attributed the

charge to hostility on the part of the prosecutor and declared themselves innocent. The prisoner, Joyuddin (No. 17,) stated

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Case of  
MAIENUDDIN  
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and others.

that the prosecutor had once before beaten him, and that he had complained to the Magistrate which led the prosecutor to include his name in the petition of complaint. The prisoner Bucksh Ally (No. 18,) stated that he was at his father-in-law's house on "the day of the occurrence." Although twenty-nine witnesses were in attendance for the defence, the prisoners declined having any of them examined.

The prisoner Amjad (No. 8,) stated that he was at home "on the day of the occurrence" cultivating his fields. He called three witnesses out of seven in attendance to prove this *alibi*, but wholly failed to establish it to my satisfaction.

The Mahomedan law officer found the prisoners guilty of culpable homicide and declared them liable to *tazeer*.

There can be little doubt I think that Maienuddin (prisoner No. 15,) the ousted occupant of the land now in the prosecutor's possession, availed himself of the opportunity presented by the latter, and his party passing near his field, to indulge in abuse originating in that cause, which was doubtless as freely returned. From words, probably both parties fell to blows, and the deceased received a severe and fatal blow on the neck, which rendered him instantly insensible, in which state he remained until relieved by death.

The merciless use of heavy *lattees* on the slightest provocation is so rife and so fatal in its consequences in the Noacolly district, that severe example seems needed for its expression.

I convict the prisoners of the culpable homicide of the deceased, and sentence them to five years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley). The prisoner No. 15, appeals, urging an *alibi* at the Amcerabad *hât*; and that he called witnesses whom the Sessions Judge did not examine.

Prisoner No. 16, states he was at a place two hours' distance from that where deceased was assaulted; that no witnesses for his defence were taken; and that he is only twelve or thirteen years old.

Prisoner No. 17, states that the evidence is contradictory and insufficient.

Prisoner No. 18, appeals urging an *alibi* at Shampore; and that he was there till two days after the occurrence; and adds that the witnesses for his defence were not heard.

Prisoner No. 8, Amjad (No. 2,) urges that although he proved he was at Belkoola at the date of the occurrence, he was punished.

Prisoners Nos. 15, 16, 18 and 8, urge that there was no proof in the police investigation of their guilt, and refer to precedents of the Nizamut Adawlut, 3rd January and 11th August, 1851.

The statements of the prosecutor are fully borne out by the

evidence of the eye-witnesses, which is consistent and satisfactory.

The evidence of the Civil Surgeon proves that the deceased's death was owing to the blows he had received.

Prisoner No. 15, in no way proves his *alibi*, and the record shows that it was at his own wish that the witnesses called by him were not examined.

The same remark applies to No. 16, and the record shows him to be 19 or 20, and not 12 or 13 years of age.

Prisoner No. 18, equally fails to prove his *alibi*. He himself refused to have the witnesses examined whom he had called.

Prisoner No. 17, does not shew in what respect the evidence for the prosecution was inconsistent and unsatisfactory; and a perusal of it leads us to a contrary conclusion.

Prisoner No. 8, Amjad (No. 2,) does not prove his *alibi*; i. e. that it was not possible from the distance of the two places that he might be at the occurrence; and the evidence to his *alibi* is vague and unsatisfactory.

We have to add that there was no ordinary police investigation as the case was taken up by the Magistrate on petition. The precedents cited specify only dates, not parties in the cases cited; but the only cases of the 3rd January and 11th August, 1851, refer to forgery, the latter also touching upon receipt of certain evidence, but in a manner which does not affect this case.

We see no reason to interfere with the order of the Sessions Judge, and reject the appeal.

We observe that the Sessions Judge has certified as to a true copy of the Civil Surgeon's deposition, a paper with many omissions and mistakes, which a perusal will show him. We have also to observe that the Civil Surgeon (in that copy) states to the Magistrate that he "suspected *partial dislocation* of the vertebræ of the neck, but there was *none*." In his deposition before the Sessions Judge, apparently in the Civil Surgeon's hand, he deposes, "I examined the body after death, and *found partial dislocation* of the vertebræ of the neck." Such a discrepancy should have been noticed. It might in some cases be important, although it so happens that it does not affect this one.

We have to notice the neglect of the Court's Circular Order (No. 6, of the 27th of February last,) on the subject of the illegibility of the records in the Judge's and Magistrate's Courts.

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Case of  
MAIENUDDIN  
alias MALLI  
BHOOTEAH  
and others.



PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

UZGUR SIRDAR (No. 4,) KADER (No. 5,) WUZEER  
MAHOMED (No. 6,) SULLEEM (No. 7,) AND JULFYI  
Backergunge. ALIAS FUKKEER MAHOMED (No. 8.)

1857. CRIME CHARGED.—Affray with severe wounding of Kader  
and Wazeer Mahomed on the one side and of Sulleem and  
May 21. Julfyi *alias* Fukeer Mahomed on the other side.

Case of CRIME ESTABLISHED.—Mutual affray with wounding.  
UZORE Committing Officer.—Mr. H. A. R. Alexander, Magistrate of  
SIRDAR and Backergunge.  
others. Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge,

Appeal re- on the 17th January, 1857.  
jected; the *Remarks by the Officiating Sessions Judge.*—In concurrence  
pleas in appeal with the verdict of the jury I convict the prisoners of mutual  
being contrary affray with wounding, and sentence them as shewn in column 12  
to the record; of this statement.  
and the evi- It appears that the cattle of the prisoner Sulleem No. 7, tres-

passage for the prosecution It passed on the crops of the prisoner Uzgur Sirdar No. 4, this  
being suffici- led to a fight between the partisans of the above two prisoners,  
ent. who, it appears, are professional *lattials*; men on both sides were  
Remarks on wounded, though not very severely. The character of the crime  
the nature of is rendered the more heinous by the use of a gun, and this fact  
this affray. has been taken into consideration by the Court in passing its  
sentence. The evidence is fully sufficient for the conviction of  
the prisoners.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We have carefully perused very lengthy appeals in this case, on the part of the prisoners. It is only the main points in them, however, which need to be noticed.

Prisoners, Nos. 4, 5 and 6, plead that there was no mutual affray, but an attack on them by prisoners Nos. 7, 8 and 9, (deceased) and others; that the chowkeedar and the witnesses colluded with prosecutor, and got up the case, and procured their conviction; that the police darogah's map, and the chowkeedar's first statement shew that their (prisoners Nos. 4, 5 and 6,) house was attacked, and not that there was, as the witnesses for the prosecution have deposed, a mutual affray at the waste land about three hundred cubits in front of the houses; that the witnesses purport to have come to work on the fields

for other people, a distance of two *dandas*, which in Backergunge in the rains is equal to four *dandas* ; i. e. a greater distance than people would come to work ; that if the cattle were the real cause of affray, the witnesses would have deposed to having seen some there, but they do not do so ; that there is discrepancy in the evidence as to the bearings of the waste land with reference to appellants' house ; that this, and a contradiction as to the order of their going, shews the witnesses were not there at all, and that the Sessions Judge did not duly consider the evidence of appellants' witnesses.

Prisoners, Nos. 7 and 8, urge that the case has been got up against them by the zemindar, to whom they did not pay *mahtote* ; and that the evidence is contradictory as to the distance of the *khal* and the position of the witnesses ; that this shews that they were not there ; lastly that one of the witnesses resides one *puhr* or say ten or twelve miles off.

We have carefully considered the whole evidence, and find it proves a mutual affray, in which Baces Sirdar fired a gun, with shot, which wounded prisoners Nos. 5 and 6, and in which affray, all the prisoners before us, i. e. Nos. 4, 5, 6, 7 and 8, were more or less engaged. None of the pleas in appeal are substantiated, and the police map does not, as asserted by appellants Nos. 4, 5 and 6, prove the attack to have been a riotous one on the premises of those prisoners. The *alibi* of prisoner No. 4, is not satisfactorily proved by the witnesses whom he calls, nor is the defence of prisoners, Nos. 5, 6, 7 and 8 ; while the wounds of Nos. 5, 6, 7 and 8, in connection with the direct evidence to the fact, lead to the presumption of those prisoners having been concerned in a mutual affray.

We reject the appeal. Had not the Civil Surgeon stated the wounds to be trivial, we should have considered that the fact of a gun having been used, and the injurious prevalence of these affrays of men armed with lethal weapons in Backergunge, would have called for a more severe punishment.

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May 21.

Case of  
UZGUR  
SIRDAR and  
others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND MOHOBUT MUNDUL

*versus*MEAJAN NUSHO (No. 4.) BHOOTAROO NUSHO (No. 5.) OMUR SHI (No. 6.) OOMOTEE NUSHO (No. 7.)  
BABULLA NUSHO (No. 8.) MEHUR NUSHO (No. 9.)  
BHOORA NUSHO (No. 10.) AND GULLIM NUSHO  
(No. 11.)

Dinagepore.

1857.

May 23.

Case of  
MEAJAN  
NUSHO  
and others.Two prison-  
ers convicted;  
six released.Remarks on  
identification  
of property,  
and on delay  
in sending in  
list of property.  
Attention  
called to Cir-  
cular Order,  
6th June, 1843.  
Rule 1, Sec-  
tion 3.

CRIME CHARGED.—1st count, Nos. 4 to 11, dacoity in the house of Mohobut Mundul and plundering therefrom property valued at Rupees 88; 2nd count, Nos. 4 to 10, having possession of plundered property obtained by the above dacoity knowing it to be such.

CRIME ESTABLISHED.—Nos. 4 and 11, dacoity; Nos. 5 to 10, having possession of plundered property obtained by the above dacoity knowing it to be such.

Committing Officer.—Mr. T. E. Ravenshaw, Magistrate of Dinagepore.

Tried before Mr. J. Grant, Sessions Judge of Dinagepore, on the 8th November, 1856.

*Remarks by the Sessions Judge.*—This case was tried under Act XXIV. of 1843. On the night of the 22nd June the house of the prosecutor was attacked by about a dozen dacoits, who carried off property, cash, silver ornaments, brass utensils and cloth valued at Rupees 88 of which 21 Rupees worth was recovered. The prisoners confessed in the mofussil and the production of portions of the plundered property by all, with the exception of Gullim No. 11, is satisfactorily proved. The prisoner Bhootaroo (No. 5,) was the next door neighbour of the prosecutor and the brother-in-law of the prisoner Meajan, No. 1, was the former's servant. The other prisoner lived at some distance and their absence from home on the night was clearly proved. Shortly before the dacoity Meajan No. 4, and Gullim No. 11, were seen in the house of Bhootaroo No. 5, and they were recognized by the witness Mayher No. 1, nephew of the prosecutor during the dacoity. Meajan No. 4, when apprehended confessed in detail and named his accomplices. Before the Magistrate and me, the prisoners pleaded *not guilty* and declared that the property produced by them was their own, but their witnesses did not support them, with the exception of the father of the prisoner Meajan No. 4. The prisoner Bhootaroo No. 5, did not make his appearance with the other neigh-

bours of the prosecutor until some time after the dacoits went away, and it is clear from the evidence for the prosecution that he accompanied them in their retreat and on his return stated that he ran away from fear. There was not any thing in the case to throw suspicion on the evidence for the prosecution and two of the prisoners were known as men of bad character.

*Sentence passed by the lower Court.*—Each to be imprisoned with labor and irons for seven years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal, but advance no special pleas to impugn the conviction of the Sessions Judge. On reference to the record, we find that the prisoners, Meajan No. 4, and Gullim No. 11, were recognised by the prosecutor's nephew, witness No. 1, at the time of committing the dacoity. The former was apprehended on 25th June and confessed, implicating the other prisoners, and stating that Bhootaroo, prisoner No. 5, a neighbour of the prosecutor's and a relative of his own, was the spy on this occasion. The houses of the prisoners, who all confessed in the mofussil, were searched; and property, consisting chiefly of metal plates and cloths, was produced. Meajan gave up a gold *nuth* and a silver *hashli*, as part of the plundered property. Before the Magistrate and Sessions Judge, the prisoners denied the charge, claimed the property as their own, and repudiated their mofussil confessions, which they stated were extorted by the darogah. They have not, however, been able to prove this defence. The property has been identified as belonging to the prosecutor but, with the exception of the ornaments produced by Meajan, it is of such a character as to render identification, where no private marks are shewn to exist, barely possible. Similar articles may always be found in the houses of people of the prisoners' class in life. And in this case there is the very peculiar circumstance also, that the list of property plundered, instead of having been sent to the Magistrate with the prosecutor's deposition as prescribed by Rule 1, Section 3, of Circular Order, 16th June, 1843, No. 138, was not forwarded till the darogah had completed his inquiry. Where the doubts arising from this supervene on the doubts arising from the character of the property found with the prisoners, (except Meajan) the suspicion of the darogah's proceedings, and of the list having been prepared to suit a purpose, is too strong to allow of a conviction of those prisoners affected by it. Against the prisoners therefore, except Meajan and Gullim, we have only their mofussil confessions, unsupported by sufficient corroborative evidence. Meajan and Gullim have been identified by Mehur Nusho, witness No. 1; and under the circumstances, we see no reason to question the truth of his statement. Further Meajan produced ornaments capable of identification, which he said were the property of the prosecutor, and

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which have been proved to be such. We therefore reject the appeal of the prisoners, Meajan No. 4, and Gullim No. 11; and not considering the evidence against the other prisoners sufficient for their conviction, direct them to be released.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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## GOVERNMENT

*versus*

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Prisoner convicted and sentenced under Act XXIV. of 1843. Previous convictions should be precisely specified. Remarks on untrustworthy approvers.

CRIME CHARGED.—1st count, dacoity on the night of the 6th September, 1844, in the house of Woomachurn Ghose of Khamargatchee, thannah Benipore, zillah Hooghly; 2nd count, dacoity on the night of the 21st June, 1847, in the house of Neelmoney Mallick of Chunderhattee, thannah Bansberya, zillah Hooghly; 3rd count, dacoity on the night of the 27th October, 1848, in the house of Bisshonath Bose of Kochatee, thannah Bansberya, zillah Hooghly; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chandersaker Roy, Deputy Magistrate under the dacoity Commissioner at Hooghly.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Hooghly, on the 14th April, 1857.

*Remarks by the Additional Sessions Judge.*—The prisoner is charged with three separate dacoities and with having belonged to a gang of dacoits.

The prisoner pleads *not guilty* and states in his defence that witnesses Nos. 1 and 2, have enmity towards him as he would not give hush money, and he denies all previous acquaintance with witness.

He does not call any witnesses to support his statements and declines to examine those he previously named as to character.

Count 1st, dacoity on the night of the 6th of September, 1844, in the house of Woomachurn. The prisoner in this case denounced by witnesses Nos. 1 and 2, and their testimony is corroborated by the fact of several of the dacoits having been traced and convicted at the time, and whose names the witnesses mentioned along with that of the prisoner in their original confession.

The dacoity charged in count 2nd, viz., that which took place in the house of Neelmoney Mallick, on the night of 21st

of June, 1847, rests almost entirely on the evidence of witnesses Nos. 1 and 2. Their description however of the way it was perpetrated tallies with that given to the police at the time, and although the persons arrested in the first instance on suspicion, were released by the Magistrate, there can be no doubt as to the dacoity having taken place, and I see no reason to question the truth of the evidence of the witnesses.

Count 3rd, dacoity in the house of Bisshonath Bose on the night of the 27th of October, 1848. Witness No. 3, in his original confession in January, 1854, named witnesses Nos. 1 and 2, and the prisoner as having been engaged in this dacoity; witness No. 2, also named the prisoner in his original confession, witness No. 1, did not do so, but named him subsequently. The way the dacoity was committed tallies with the accounts given by the witnesses and their testimony is corroborated by the fact that one of the gang, by name Bhubanee Singh, was wounded by the chowkeedar throwing a spear at him, and who although getting away at the time, has since been apprehended and sentenced to imprisonment for life in this very dacoity.

Considering the cases charged in the above counts satisfactorily established against the prisoner and it also being evident that he is a professional dacoit, I convict the prisoner of the dacoities charged, and also of having belonged to a gang of dacoits, and recommend that he be imprisoned in transportation beyond sea for life with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner's complicity in the three dacoities entered in the charge is proved by the evidence of the approver-witnesses Nos. 1 and 2, who confessed to these and other dacoities, long previous to the apprehension of the prisoner. Their evidence has been admitted as good and credible in the case of Deenoo Dolaye, sentenced by this Court to transportation for life, on 24th October, 1856, for being concerned in the Kumargatchee and Kochattee dacoities, and in the case of Bhowanny Singh, likewise sentenced to transportation for life, on 24th October, 1856, as being engaged in the Kochattee dacoity, and who was wounded by the chowkeedar while committing that dacoity. We convict the prisoner on all the counts; and sentence him to be imprisoned for life with labor and irons in transportation beyond seas under Act XXIV. of 1843.

With regard to the evidence of the approver Madhub, witness No. 3, if he be the witness of that name who gave evidence in Bhugwan Doolaye's case, (Vide Nizamut Adawlut Reports of 1854, July 29th, page 156, para. 4,) the Court desire to caution the Additional Sessions Judge as to the little credibility to be attached to this man's testimony.

In the 4th paragraph of his letter, the Additional Sessions Judge refers to the conviction of other parties concerned in the

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dacoity mentioned in the 1st count of this calendar as proof of the credibility of the witnesses. The Judge should, in the margin of his letter, have specified the names of those parties, with the dates and other leading particulars of their convictions.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqrs.,  
*Officiating Judges.*

*Trial No. 3.*

GOVERNMENT AND HAZAREE MEEGA AMEEN

*versus*

BEESHOO SIRCAR (No. 5,) HOSSAIN SIRCAR (No. 6.)  
HURY DOSS MANJEE (No. 7,) KODUM CHOWKEE-  
DAR (No. 8,) KHODA ROHIM (No. 9.) BURROO  
SHEIKH (No. 10.) MOONSHEE SIRCAR (No. 11.)  
ROHEEM SHEIKH (No. 12.) AND RAMKOMUL  
CHUCKERBUTTY (No. 13.)

*Trial No. 4.*

GOVERNMENT AND AKOOL TAGADGEER

*versus*

BEESHOO SIRCAR (No. 14,) AND HOSSAIN SIRCAR  
(No. 15.)

Mymensingh.

*Trial No. 6.*

GOVERNMENT AND BHYRUB SIRCAR

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BEESHOO SIRCAR (No. 18,) AND HOSSAIN SIRCAR  
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*Trial No. 7.*

GOVERNMENT AND KALLEEPERSAUD

*versus*

BEESHOO SIRCAR (No. 20,) AND HOSSAIN SIRCAR  
(No. 21.)

*Trial No. 8.*

GOVERNMENT AND MR. G. C. O'GERMAN

*versus*

BEESHOO SIRCAR (No. 22,) AND HOSSAIN SIRCAR  
(No. 23.)

Pleas of  
Counsel over-  
ruled, and ap-  
peal reject-  
ed. Prisoners  
convicted and  
sentenced to  
various terms  
for riotous  
acts. King-  
leaders to 14  
years in ban-  
ishment as an  
example.

CRIME CHARGED.—Trial No. 3, 1st count, arson, in mali-  
ciously setting fire to and burning the house of the prosecutor's

master, thereby causing a loss of property valued at Rupees 3,774-5-10; 2nd count, plundering property, among which was cash amounting to Rupees 694-4-4.

*Trial No. 4.*—Forcibly arresting, confining and assaulting Hazaree Meega, Judge Ameen, servant of the prosecutor's master and extorting from him Rupees 81.

*Trial No. 6.*—Attacking the kutcherry of the prosecutor's master, Mr. Barry, and carrying away the prosecutor and Goorooershad Dutt, also assaulting and illegally confining the above persons and forcibly taking from them Rupees 195 and plundering property worth Rupees 25 to 26.

*Trial No. 7.*—With an armed body attacking the prosecutor's house in the night and plundering therefrom cash Rs. 2-6 and property consisting of brass utensils, &c. valued at Rupees 29-4. Total Rupees 31-10 annas.

*Trial No. 8.*—With an armed body attempting riotously to attack the prosecutor.

Committing Officer.—Mr. W. Cockburn, Deputy Magistrate of Jamalpore.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 25th February, 1857.

*Remarks by the Sessions Judge.*—The prisoners were implicated in eight different cases of arson and plunder, &c. and in three of which although no doubt engaged, they were acquitted by me for want of sufficient proof of their guilt. The facts of the cases, as gathered from the record of commitment and the evidence recorded on the trials and the causes which led to the commission of these wanton and lawless outrages, are detailed in the following paragraphs.

*Trial No. 3.*—It would appear that Messrs. Mackay, Barry, and Co. of Serajgunge, purchased an indigo factory in zillah Pubna, which was for some years closed and which they commenced work contrary to the wishes of Moulvee Abdool Alee, an opulent zemindar, when a breach of the peace being anticipated on the part of the latter, he was bound over in a heavy recognizance, and being thus frustrated in his endeavours to shut up the factory, he determined to injure the other factories belonging to the said firm situated within this district, and accordingly a body of his adherents, the dependants and others, about two hundred and fifty in number, attacked Mr. Barry's factory at Mullool and plundered his property and afterwards maliciously set fire to the factory-godown which was burnt to the ground, together with a bungalow and thereby caused a loss of property to the extent of Rupees 3,774-5-10.

The prisoners denied the charge throughout. In this Court No. 5, entered into a long detail of the oppression and his illegal confinement, which he alleges he was subjected to by Mr. Barry, and that Mr. Barry's people themselves set fire to the

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factory and got up the charge against him to evade the consequences of a complaint, his son Moonshee Sircar instituted against Mr. Barry. Prisoner No. 6, pleaded *alibi* at Kagnaree on the date of occurrence and stated that if the outrage complained of had been correct, people residing in the neighbourhood would have been examined in support of the same, that owing to several complaints having been preferred against Mr. Barry by the ryots of his master Moulvee Abdool Alec, Mr. Barry has got up this and several other cases against him, and he had the factory set fire to through his own people to get him and his master's *omlah* into trouble.

The law officer finds the prisoners guilty of the crime charged and I concur in this finding. It has been clearly established on the evidence of the prosecutor and the eye-witnesses Nos 1 to 4, that the prisoners attacked the factory and plundered property, and that one Meeaoollah set fire to the godown which gradually broke out into an immense flame and that the rioters decamped only when they found that every effort to extinguish it would have been hopeless, and they have also been recognised by witnesses Nos. 5, 7, 8, 9, 10, 11, 13, 14 and 15, some of whom are unconnected with Mr. Barry. The prisoners plead *alibis* and have respectively examined several witnesses to prove the same, but as the evidence against them is quite consistent and conclusive of their guilt (their names having been stated throughout) I cannot put any faith in their evidence. No. 5, urges that he was carried away by Mr. Barry's people and detained at several places from the 22nd Assin to 12th of Ughun, and that consequently it is not probable that he should have been engaged in the acts charged against him, but I remark that the evidence of most of the witnesses examined by him is of a hearsay character, and some of them deny all knowledge of his having been carried away by Mr. Barry's people, and although witnesses Nos. 38, 42, 43 and 45, depose to having seen Mr. Barry's people carry the prisoner away, their evidence is discrepant and unworthy of credit. Witness No. 38, states that he saw the prisoner being carried away by one Bhyrub Sircar and Hazaree, servants of Mr. Barry, from a *khall* at Nullooa but witness No. 42, makes no allusion to Hazaree or Bhyrub and states that two *pansooees* containing some one hundred or one hundred and twenty-five *latteals* took the prisoner and one Azeez Khan away from Nickrail Khall, but witness No. 43, makes no mention of Azeez Khan, again witness No. 45, gives a quite different version of the matter, alleging that one Gobind Sircar called the prisoner to a *dingee*, when two *pansooees* came from the other side of the river and took off the prisoner. Prisoner No. 6, has examined six witnesses in support of the plea of *alibi*, and although they have in a manner supported the story, I attach much suspicion to their evidence, as from its tenor there is

every reason to believe that they (the witnesses) have collusively given evidence and the suspicious nature of their evidence does not admit of my placing any reliance on it in preference to that for the prosecution, and the distance on a comparison of the map prepared in the survey department is not so great (nine miles) as not to admit of his being present at the time that the outrage was committed and then to have returned shortly afterwards to Kagmaree. The prisoners take exception to the evidence for the prosecution, on the ground of the witnesses being servants and dependents of Mr. Barry, but it will be observed that as the occurrence took place late at night, it is unreasonable to expect that any one, excepting the factory servants, could have been present to witness the scene. Their plea also, of the factory having been burnt by Mr. Barry's people themselves, is, in my opinion, beyond belief, it being highly improbable that any one would set fire to and destroy his own property which was moreover of great value, amounting nearly to 4,000 Rs. and to the correctness of which the list filed has been sworn to by witnesses Nos. 5 and 7. The prisoners' vakeel also urge on behalf of their clients that as this outrage is said to have been committed at night, it is impossible that they could have been recognised, but upon this point, I have to remark that it was a moonlight-night and that several of the witnesses stated before me that owing to both the moonlight and conflagration, the night was like day, and consequently the prisoners who were before well known to the witnesses could be easily recognised by them. They also, it appeared to me, made some very unfounded assertions against Mr. Barry, which they did not even attempt to prove and which tend rather to weaken than strengthen their case. I have also to remark that the complaints which were preferred against Mr. Barry by certain ryots of having sown their paddy-lands with indigo, have been proved to be false, from the Magistrate and the Deputy Magistrate having personally visited the spot and ascertained from personal observation that such was not the case.

*Trial No. 4.*—The prosecutor, Akool Tagadgeer, deposes that on the 12th or 13th Kartick last, Hazaree, Judge Ameen, received 69 Rupees from Mr. O'German on account of expenses for Chandparah factory and was going there in company with the prosecutor; that when they came close to the Potul cutcherry the defendants and others, about two hundred in number, attacked the ameen and severely assaulted him and also snatched the money from his person; that he lodged the complaint before the Deputy Magistrate as soon as he came to the spot; and that Hazaree, Judge Ameen, was set at large from the Moulvee's cutcherry seventeen days afterwards by the peon who was deputed for the purpose.

Prisoner No. 14, points out certain discrepancies in the evi-

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dence for the prosecution and urges that he has been implicated in the matter owing to a quarrel existing between Mr. Barry and Moulvee Abdool Allee, the former having sown indigo in the latter's land without a pottah. No. 15 pleads *alibi* at Kodaleea, which he states the witnesses examined by him in the foudary have proved. He also impugns the evidence of the witnesses for the prosecution on the ground of their being dependants of Mr. Barry.

The law officer is of opinion that the evidence in this case fully justifies the conviction of the prisoners and I agree with him. It has been clearly established by the prosecutor and witnesses Nos. 1 to 3, and the said Hazaree, that the latter had been carried away by the prisoners and their lawless band, and that he was actually plundered of the money he had with him, and which circumstance is also corroborated by the testimony of Messrs. Barry and O'German; and witnesses Nos. 6, and 7, Hury Singh and Bashee Peadah depose that the said Hazaree was released from the Moulvee's cutcherry by the police while in custody of prisoner No. 14, and others.

*Trial No. 6.*—The prosecutor in this case, Bhyrub Sircar, deposed that on the 32nd Bhadoon last, he went to Durgapore Chur to superintend the sowing of indigo and at noon returned to his employer's cutcherry at Berry Pothal, together with one Gooroopersaud, when the prisoners and others, creatures of Moulvee Abdool Alec, about two hundred or two hundred and fifty in number, attacked the cutcherry and severely assaulted them and took them to Potul Khall where the Sirdars again assaulted him by the orders of the prisoners and demanded 500 Rupees from him, and that he only obtained his release by paying 195 Rupees; that after he had paid the money the prisoners searched his boat and stripped it of its contents, containing brass utensils and clothes, &c.

Prisoner No. 18, impugns the evidence of the witnesses for the prosecution and urges, that if the outrage complained of had been correct people residing in the neighbourhood of the place would have been examined in support of the same. No. 19, pleaded *alibi* at Chur Bashaleea at the house of one Goluck Bose where he alleges he had been collecting rents.

The law officer considers the charge proved against the prisoners and declares them liable to *tazeer*. I concur with him in thinking that the charge of extortion of 1'5 Rupees from the prosecutor, accompanied by assault and plunder of articles from his boat, has been clearly brought home to the prisoners on the evidence of witnesses Nos. 1 to 3, and the discrepancies which the defendants point out are immaterial, their evidence being consistent as regards the main point. The prisoners each examined one witness in support of their defence, but they have signally failed to prove their assertions.

*Trial No. 7.*—Kalleeersaud Sircar the prosecutor deposes that owing to his not leaving Mr. Barry's service, which the prisoners requested him to do, they, with fifty or sixty *latteeals* attacked his house on the 14th Kartick last at daybreak and plundered his property to the value of about thirty Rupees, a list of which he has filed; that he went to Jamalpore to complain of the outrage but was unable to do so until five days as the Deputy Magistrate was not at the station.

The defendants denied the charge; No. 20, stated that the charge was a false one, no plunder having been actually committed in the prosecutor's house, which the people residing in the prosecutor's neighbourhood would prove, further, it is not probable that he committed the outrage as he was detained in several places by Mr. Barry. No. 21, pleaded enmity between his master Moulvee Abdool Alea and Mr. Barry as the cause of his being implicated in these several cases.

The law officer convicts prisoner No. 21, but acquits No. 20, on the ground of his being named by only witness No. 1, Annoo. I differ from him as regards prisoner No. 20, although he has been named only by one witness, yet the prosecutor named him both before the Deputy Magistrate and in this Court, and complied with the evidence of witness No. 2, taken before the Deputy Magistrate, (although absent in this Court) leaves no room to doubt his guilt. I would therefore convict them both; prisoner No. 20, examined three witnesses to prove that no plunder was committed in the prosecutor's house, but two of them have totally failed to support this assertion.

*Trial No. 8.*—Mr. O'German deposes that about the 27th or 28th of October last, at 8 o'clock A. M. he went to sow some indigo lands belonging to the Chandpara factory when he was attacked by a body of about one hundred and fifty *latteeals*, who came out of the moulvee's cutcherry at Potal, crying out "*mar, mar*," "*sahib mar*," and that when they were about one hundred yards distant from him he got into his boat and made off and that he was told that the rioters were headed by the prisoners; that the two police burkundazes who were deputed by the Deputy Magistrate of Jamalpore to disperse an illegal assemblage, told him to make his escape as they stated that they would not be able to resist such a large body, and that his life would be in danger.

The prisoners denied the charge, No. 22, relied on the case brought by his son and the witnesses examined by him, in the case of arson, for his defence; No. 23, stated that he was absent at Kodalleen on the date of occurrence which he states the witnesses examined by him before the Deputy Magistrate have fully proved.

I concur with the law officer that the proof in this case is complete; witnesses Nos. 1 to 3 have clearly deposed that the rioters

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were headed by the prisoners who came up crying out "*mar, mar,*" "*sahib mar*" and if Mr. O'German had not timely escaped in his boat serious consequences would have doubtless occurred; further, the outrage was committed in the presence of two police officers with impunity as resistance was hopeless, and it is in evidence that the lands which Mr. O'German was about to sow with indigo were old indigo lands, concerning which there was no dispute.

The prisoners are men of notoriously bad characters and professional *lattials* and live upon plunder and oppression having always fighting men at their command, and they have carried on their depredations to such an extent that they have become an object of terror to the people residing in the southern part of the district, thereby rendering life and property scarcely secure. Their characters are well known to both the European residents and natives of that part of the district, as appear from the evidence of Messrs. Biggle and Heeywit who deposed on oath before the Deputy Magistrate that the people look upon them with terror and are afraid to complain or give evidence against them; a few instances of their malpractices as apparent from the reports forwarded by the Deputy Magistrate of Manik-gunge and the Magistrate Mr. C. E. Lance at the request of the Deputy Magistrate of Jamalpore, will show the numerous outrages they have been concerned in for a number of years past.

In 1849, Hossain Sircar was convicted of wounding and sentenced to one year's imprisonment with labor commutable to a fine of 100 Rupees. In 1851, the prisoner was convicted in twelve cases of plunder, oppression and extortion and sentenced to six months' imprisonment and to pay a fine of 200 Rupees or in default to a further period of six months' imprisonment. In 1854, he was sentenced to a further imprisonment of six months and a fine of 200 Rupees or default to a further period of six months with labor, for attempting to attack the police thannah of Pakoollah, and again in 1855, he was sentenced to a 100 Rupees fine or three months' imprisonment in a case of plunder and contempt of Court.

The prisoner Beeshoo Sircar was similarly convicted in 1844, in three cases of plunder and sentenced to six months' imprisonment and to a fine of 200 Rupees or in default to a further period of six months' imprisonment, and again, in 1851, in four cases of plunder, he was subjected to a like term of imprisonment, and in one case of oppression, in which Government was prosecutor, he was bound over in a heavy recognizance of 1000 Rupees for good behaviour, or to suffer three years' imprisonment.

From the evidence above detailed, being of opinion that the crimes of which the prisoners stand charged in the several cases

have been fully established against the prisoners. Beeshoo Sircar and Hossain Sircar, and taking their notoriously bad characters and the several serious acts of oppression committed by them into consideration, I recommend that a consolidated sentence of ten years' imprisonment each with labor and irons, in banishment to separate districts, be passed upon the said prisoners.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Counsel for prisoners, Messrs. L. Clarke, R. Doyne and T. Twidale.

Counsel for prosecution, Mr. R. T. Allan and Baboo Sum-bhoonath Pundit.

This case involves *five* separate trials. The Sessions Judge has referred the case to this Court, owing to a difference of opinion with the law officer, as to the guilt of the prisoner Beeshoo in trial No. 7, and because the ends of justice seem to him to require a greater measure of punishment in regard to Beeshoo and Hossain Sircar than he is competent to award. The prisoners have put in petitions of appeal against all the convictions.

We will proceed to give *our judgment* on the guilt or innocence of the prisoners in *each trial, separately*. We would premise that it is sufficiently patent on the record that the prisoners in all the trials are more or less connected with Moulvee Abdool Alee;—and the prosecutor, and many of the witnesses with Barry and Co., indigo planters of Serajunge.

(*Case No. 1.*) *Calendar No. 3, Government and Hazaree Meeah, versus prisoners Nos. 5 to 13 inclusive, viz. Beeshoo, Hossain Sircar, and seven others.*

The prosecutor and four eye-witnesses depose clearly to the prisoners having been engaged in the offences charged in this calendar. The prisoners plead that the enmity existing between the two principals, respectively, had led to these prisoners being falsely accused; and they also plead *aiibis*. The Sessions Judge has convicted them; and it remains to be shewn by them that he has done so wrongly.

Mr. Clarke urges that the position of the prosecutor and eye-witnesses was such that the latter were interested, and biassed parties; that their evidence must be received with great caution; and if found defective, must be rejected *in toto*; that had the attack charged really taken place, as described by the prosecutor and witnesses, they would not have remained so close to the spot as they depose they did, but would have certainly continued running away till a very considerable distance had intervened between them and the place of the riot; that in this country it is not unusual for prosecutors or their people to fire premises themselves, or inflict wounds on their own persons; that the moon was all but set at the period stated as

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that of the recognition of prisoners; that the witnesses, except one, said that the light of the conflagration, *in addition* to that of the moon, enabled them to recognize the prisoners; that the terror of the prosecutor's witnesses on being roused from sleep by such a riot would prevent that clearness of mind necessary for proper recognition, even when the prisoners were close to them, and that much less could they really recognize them when they, the witnesses, had gone further off; that the witnesses vary in different statements given at different times, as to the numbers and individuals recognized; that taking the numbers at twenty-three or twenty-eight, between which they vary, it is impossible that in such a state of terror and confusion, at night, so large a number of persons could be distinctly and properly recognized; and that if the Court did not think these twenty-three or twenty-eight persons were so recognized and named, they must treat this, the main evidence for the prosecution, as that of perjured witnesses. Mr. Clarke concluded by referring in detail to the discrepancies in the evidence of the witnesses for the prosecution. These discrepancies in detail will be more properly noticed in a subsequent part of this decision.

Mr. Doyne, on the same side, urged that the record shewed that there were houses of villagers all round the place of the occurrence, yet none of these villagers were called and examined, though they could have given independent, and therefore the best evidence; that the record also shewed that Barry and Co. kept one hundred or one hundred and fifty *lattials* on the premises; yet there was no affray with them, and the alleged rioters had no wounds, or injuries, or marks of collision; that there was no recognition, except by the witnesses Nos. 1 to 4, servants of Barry and Co.; that this shewed that in fact there was no riot, and that no one saw any riot; but that the interested and incredible witnesses Nos. 1 to 4, falsely stated they did; that none but themselves mention these witnesses to have been in a position to see what they allege they saw, though such a grave occurrence, if real, would have brought many to the spot. Mr. Doyne adds that these four witnesses were either so concealed that they could not see, or so exposed that they would themselves be in proximate danger, a position in which they would never put themselves; especially, as in this case, they themselves depose to their having at once ran away for self-preservation; that their stopping short where they said they did, was incompatible with what they themselves said was their main and absorbing object; i. e. self-preservation; that while there are all these defects as to the evidence of these *four* witnesses, there is nothing whatever to corroborate their testimony; that neither villagers nor police officers are called upon to depose; that the boxes are stated by the witnesses for the prosecution

to have been broken open, but not a word is said of the disposal of their contents; and that it is, as the case stands, as likely that Barry and Co.'s *lattials*, in the absence of the dewan, plundered the cash, and burnt the premises, alleging it to be the act of the prisoners, as that it was the act of the prisoners, or that they were identified, or engaged in it.

Baboo Anodapersad on the same side, urges that it is highly improbable, that the prisoners would have delayed their attack to the latter part of the night, when there was moon, instead of making it in the earlier part, when there was none; that it is equally so that none of the people of Barry and Co., witnesses or others, should have been assaulted or beaten, especially if the former had been roused from their sleep by the rioters, and also subsequently in such close proximity as they allege, to two hundred such rioters. The Counsel adds, with especial reference to prisoners Nos. 5 and 6, Beeshoo and Hossain Sircar, that as these two were being searched for by the police, under charges in other cases, at the very time of the offence charged in this, it is most improbable that they would have mixed themselves up in this case. The Counsel concludes by referring to a list of cases brought against Barry and Co., or their people, by the prisoners, in which the prosecutor and witnesses in this case were more or less concerned, and in consequence of which, he alleges, the present false charges have been brought.

We will first consider and give our opinion upon the *general* pleas of counsel; and then upon those regarding the *specific* discrepancies in the evidence; and lastly as to whether the defence of the prisoners is sufficiently substantiated to warrant an acquittal.

On the *first* point, we think the fact of the prosecutor and witnesses being servants of Barry and Co., cannot, as admitted to a certain extent by the Counsel for the prisoners, make their evidence unworthy of credit, unless it can be shewn that they have deposed in such a manner that no other reasonable conclusion can be come to than that they have deposed falsely, as to the prisoners; for naturally they would be the parties present on the premises, and it is clearly in evidence that they were so. Nor do we see that it is at all unusual for persons situated as these witnesses were, upon such an occurrence as this, sleeping on the premises, and well acquainted with the immediate neighbourhood of them, to evacuate the main buildings, on which the attack was directed, and at the same time conceal themselves in various near spots, whence they might, unseen themselves, watch the progress of affairs. Mr. Doyne argued that the witnesses all admit to some little exposure of their bodies even when in their places of concealment, while there is, against this, the notorious improbability that terrified Bengalees would have run the risk of any exposure, or not have been discovered

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or assaulted if they did, in the places they were ; and that the testimony of these witnesses is in consequence not to be credited as to their means of recognition. We however think, (judging from what experience shews to be the case in dacoities, and similar cases,) that the practice of the people of the country is in accordance with the measures alleged by the prosecutor and the witnesses to have been adopted by them. *Further* we do not think, that when the rioters found that the dewan, of whom they were in search, had gone, and the rioters were engaged in firing the premises, and breaking open the boxes, the witnesses must necessarily have been searched for or discovered in the places in which they were concealed. It may be added that none of the witnesses depose to having seen the boxes broken open, but that they merely heard the sounds.

It has been urged by Counsel that the supposition is not unreasonable that the people of Barry and Co., themselves burnt the premises. It behoves us, however, to remark on this point that all the evidence for the prosecution is against this view, while the evidence of the witnesses on the other side, who say they saw Bhyrub and Hazaree fire them, is very unsatisfactory ; and the hearsay evidence, to the same effect, of other witnesses is necessarily even more so. At the same time the very argument used against the prosecution, i. e. that there were numerous villagers, unconnected with either party, who could have deposed to the truth of the charge now under trial against the prisoners if true, and did not do so, must equally affect the case in regard to the plea that the people of Barry and Co. themselves fired their own premises.

As to the means of recognition, our opinion, based on the evidence, is, that the parties were previously well known to each other, that there was moonlight, *and also* the light of the conflagration ; and that these afforded means of recognition. There remains, in respect to this recognition, the plea that it would be most difficult for a man from memory to recognize, select, and retain the names of twenty-three or twenty-eight persons, out of two hundred, in such a scene as that deposed to. But if the evidence for the prosecution is to be relied on, it shews that the witnesses were in positions to see quietly, they being unseen ; that the riot lasted about an hour ; that the witnesses were within twenty cubits, and that the parties were well known to each other ; some indeed had been implicated, more or less, as parties or witnesses in cases between the two sides.

In respect to Baboo Anodapersad's argument, we may remark that the question is *not* as to the *improbability* of the attack *by* moonlight, instead of *before* it, for all the evidence clearly shews that the time, place, and acts are correctly stated ; and that *the* question is whether *the prisoners before us were engaged in those acts*. Further, the escape and concealment of

the prosecutor and witnesses sufficiently accounts for none of the witnesses being wounded. As to the pleas specially for prisoners, Nos. 5 and 6, it is necessary to remark that even, with the police ordered to apprehend them, the prisoners might, on the one hand, be of so hardened a character as not to regard any such order, and the police, on the other hand, so weak, and inefficient as to be unable to act against them. The fact of the prosecutor and witnesses being concerned in other cases brought against them by some of the prisoners might be a ground or indication of *mutual* enmity, but the fact would not lead to the direct inference that, the enmity being mutual, a false charge in this case is made by the prosecutor, and riot and arson *not* committed by the prisoners.

The fact of the occurrence charged is undoubted. The Courts below have held that these prisoners, Nos. 5 to 13, are guilty of the charge against them. The precise and only question for our decision is, *not* whether twenty-three or twenty-eight persons could be recognized, but whether, *these prisoners, Nos. 5 to 13, have been so ; and are properly convicted.*

This leads us to the *second* point; viz. the consideration of the discrepancies alleged by Counsel to be such as to render the evidence for the prosecution, in regard to these prisoners too defective to warrant a conviction.

Mr. Clarke urges that the prosecutor stated at the thannah thirty-three names as those of parties recognized by him ; and to the Magistrate twenty-three ; that at the Sessions he omitted the names of ten of those named by him at the thannah, adding six to those named by him before the Magistrate, and omitting seven. That witness No. 1, stated at the thannah that he recognised twenty-eight persons, but that of these twenty-eight, prosecutor only mentioned twenty-one, while to the Magistrate this witness omitted the names of four persons, and added others ; that at the thannah this witness spoke of recognition by moonlight only, and to the Magistrate by moonlight *and* conflagration both : and that at the Sessions this witness named prisoner No. 13, whom he had not named to the Magistrate ; that witness No. 2, mentioned thirty-two persons at the thannah, four of whom were not mentioned by the prosecutor ; that this witness added three names before the Magistrate, and omitted seven or eight, and before the Sessions Judge added five new names, one being that of prisoner No. 13 ; that this witness also mentioned at the thannah that the moonlight afforded means of recognition, and at the Magistrate's Court, that the moonlight *and* the conflagration did so.

Mr. Clarke urges that these discrepancies indicate the testimony of the witnesses to be false, while their position as interested parties affords a direct motive for its being so ; that therefore such evidence cannot warrant a conviction.

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The question for our decision, in regard to these discrepancies is *firstly*, how far they effect the *general* credibility of the evidence for the prosecution; and *secondly*, how far they affect particularly the individual guilt of each of the prisoners, Nos. 5 to 13, now before us.

On the *first* of these points, we may say that we do not think that in cases of riot and affray, the discrepancies of some few names, given by the same parties in different Courts, destroy the general credibility of evidence for the prosecution, if it is otherwise clear and consistent and supported by prominent facts. This is we think the case here. Further, the statements of the witnesses at the police are not made on oath or solemn affirmation; and are prohibited by Circular Order, 16th June 1843, No. 138, para. 3, rule 4, to be taken in any detail. Again witnesses at the thannah have not that control or security over the police as to be always able to secure that what they say, is really that which the thannah papers represent them to say. Moreover the discrepancies here in names in the Magistrate's Court are not so very important as to involve distrust of the entire depositions. The above remarks equally apply to the different statements of different persons, as contradictory to each other; and it is to be noticed the witnesses saw the occurrence and the persons concerned, from different localities.

On the *second* of these points, i. e. how far such discrepancies affect the guilt or innocence of any of the particular individuals before us, we have to observe that the prosecutor and the witnesses consistently state the names of prisoners, Nos. 5, 6, 7, 8, 9, 10, 11 and 12, as present and concerned, and in regard to prisoner, No. 13, the omission of his name is not general or preponderating.

After a careful consideration of the pleas urged by Counsel, and of the statements of the prisoners and their witnesses, and of the evidence for the prosecution taken as a whole, we do not see any reason for acquitting the prisoners on the ground of the evidence for the prosecution in this case being insufficient to sustain a conviction.

It remains to see whether the defences and *alibis* of the prisoners are so proven as to shew that they could not have been guilty of the charges on which they have been convicted in this case.

We think it unnecessary to say more upon this point than that we look upon the whole of the evidence as to the *alibis* of Nos. 5, 6, 7, 8, 11 and 13, and as to the firing of the premises of Barry and Co.'s by the people of the latter, to be either so vague and unsatisfactory as to be insufficient to prove the *alibis* as they ought to be proved, or else so unnaturally positive and precise as to lead to no other conclusion than that the witnesses

have been tutored; indeed in one instance the most positive evidence, at the beginning of a deposition, reduces itself at the end on cross-examination into mere hearsay. We may notice in regard to the special plea of Beeshoo Sircar, (i. e. that he was at the time of the occurrence charged in this and in the other four calendars; in the hands of Barry and Co.'s people, from the 22nd of Assin to the 11th or 12th of Aughun,) that the record in another of these five trials, viz. in Calendar, No. 7, shews, as there alleged, that Beeshoo was seized by the Police on the 29th of Kartick, a point he admits in his defence here, adding that by the collusion of the police he was again made over to the people of Barry and Co., who kept him in confinement till the 11th or 12th Aughun, when he got away, and gave himself up to the Deputy Magistrate's nazir. But no proof has been given of this second confinement; and that alone could disprove this charge against him.

On a full consideration of the whole of this case we see no reason to interfere with the convictions recorded against prisoners Nos. 5 to 13 in it.

(Case No. 2.) Calendar No. 8, *Government and O' German prosecutors, versus Beeshoo and Hossain Sircar.*

The Counsel urges that the indictment is bad; inasmuch as it charges prisoners "with an armed body, attempting riotously to attack the prosecutor," whereas, albeit a riotous assemblage may be an offence, the real charge is "*attempt to attack*," which is no offence; and that there is no law by which the conviction in this charge could involve punishment.

The charge in the vernacular (Bengali) to which the prisoners were called upon to plead and did plead in the same vernacular dialect, is *totidem verbis*—*toomi, dunga hangama manuse, ostro-dhari, jumceut-bust, Sahiber pruti, akrumun korite oodyot hoa*; literally "*were you for the purpose of affray,\* armed, assembled, prepared to attack the sahib?*"

We consider this indictment good; although inaccurately translated in the English calendar of the case. Further, the evidence shews that the prisoners, for the purpose of affray armed, assembled, pursued after prosecutor; and that the latter only escaped by getting into his boat, and pushing out from the land. Counsel have urged that such a view of the law might lead to any act of terrifying a person of weak nerves by pursuit, being made an offence. Irrespective of this rather vague plea, requiring properly restrictions and definitions to make it correct, we think it may, with more propriety of reason, be urged, that the pursuit of a person, by a large and armed assemblage for the purpose of affray, and injury to him, is an

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offence, both by the intent of the law and by its terms. We overrule this objection.

Counsel proceeded to object to the evidence itself. It is urged that O'German does not name the prisoners; that those who do so are not to be believed; that the distance from which the witnesses (boatmen of Barry and Co.) saw the occurrence, is not shewn; that their witnesses do not depose to having been previously acquainted with the prisoners; that the police burkundazes on the spot did not mention Beeshoo to the Magistrate; that Beeshoo has proved his *alibi*; and that the statement of Hazaree in another case in Calendar No. 4, that he was attacked in quite a distinct and separate manner, by the same prisoners on the same 13th of Kartick, is most inconsistent and improbable.

We consider the evidence of the witnesses for the prosecution in this case clear and consistent; and we do not think the fact of O'German, when pursued, not recognizing the prisoners, then behind him, nor that of a burkundaz omitting to mention Beeshoo's name to the Magistrate, counterbalance all that evidence. The *alibis* of Beeshoo and Hossain are neither of them satisfactorily proved; especially not, in the face of the direct evidence above referred to.

The last plea as to the date of the 13th of Kartick, will be found to have been fully adverted to and overruled in the next case.

We see no reason to interfere with the conviction in this case.

(Case No. 3.) Calendar No. 4. Government and Akool Takadgeer, versus Beeshoo and Hossain Sircar.

The main pleas of Counsel in this case relate, *firstly*, to the discrepancies in the evidence as to the horse ridden by Hazaree Meeah, i. e. witness No. 1, saying before the Magistrate that the horse was left on the spot, and prosecutor saying that the horse was taken on again with Hazaree; *secondly*, to the date being the same as that on which the preceding case is deposed to have occurred, the 13th of Kartick; *thirdly*, as to the amount and disposal of the money said to have been taken from Hazaree; and *fourthly*, as to the evidence of the police not having been taken.

As regards the *first* of these points, we find that the words which Counsel have apparently construed "left on the spot," are *phelia dea*, i. e. overthrown, or knocked on one side. This cleared, the whole evidence fully shews that Sadick Meeah thrust the horse with a spear, and that it was taken away when Hazaree was. As to the *second* of these points we find that the 13th Kartick 1263, B. S. was *Tuesday*, and all the witnesses consistently depose to that having been the day; whereas in the preceding case, (O'German's) the date is said to

be the 12th or 13th of Kartick; the day of the week, however, being clearly deposed to as *Monday*. On the *third* of those points, we have to remark that we do not see any material discrepancy as to the amount of the money. O'German clearly deposes to his having paid 69 rupees to Hazaree, and the latter deposes to having 69 or 70 rupees of the factory money, and 11 rupees of his own. It is not necessary for the prosecution to prove the disposal of that money. As to the last of the pleas, we hold that it is not necessary for the prosecution to call the police as witnesses if the other evidence is sufficient; and if the prisoners considered the evidence of the police essential, they should have called it.

We think the defence of the prisoners in this case quite fails. Beeshoo's own witnesses in the foudjary, (he did not call them at the Sessions,) do not support his statement. The witnesses of Hossain Sircar, also on the record of the Magistrate only, depose in a most vague and unsatisfactory manner.

We see no reason to interfere in regard to the conviction of the prisoners in this case.

(*Case No. 4.*) *Calendar No. 7. Government and Kallypersaud, versus Beeshoo and Hossain Sircar.*

Counsel urge in this case that the prosecutor first says that the attack was in the *evening*; and to the Sessions Judge that it was when *two hours of the night* remained; that witness No. 1, first says that the attack was in the morning, and to the Sessions Judge that it was when some of the night remained; that the witnesses vary as to the numbers who attacked the premises; that if there was the bitter animosity deposed to, it is absurd to suppose that the attacking party would have confined themselves to taking a few pots, and not have done prosecutor any bodily injury; that although the prosecutor says the attack was like a dacoity, he did not report it to the police till the 19th.

We find in this case, as to the time, that prosecutor and the witnesses only differ as to between "three or four *dundos* of night remaining" (a *dundo* being about fifteen minutes) "and before day dawn;" and as to the numbers they vary between 30 or 40, to 60, 70, and 100.

We do not think that such discrepancies are enough to destroy the case for the prosecution, if the evidence on that side be otherwise good and trustworthy in the main. We do not deem that the plea based on an inference that the case is not true, because no bodily injury is proved, one worth much notice, even if it were unexplained; but it is explained by prosecutor's stating that he ran away. The delay in bringing the case to the notice of the police is also explained by prosecutor having gone to Jumalpoore to lay it before the Deputy Magistrate, but not having found him there he returned, and presented his petition to that officer, who was then at Nulloah.

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The prisoner, Beeshoo, relies on his former *alibi*; and Hossain Sircar confines himself to a denial, and to urging the enmity of Barry and Co. and their people against him.

We concur with the Sessions Judge as to the guilt of both the prisoners; and see no reason to interfere with their conviction.

*Case No. 5. Calendar No. 6, Government and Bhyrub Chunder, versus Beeshoo and Hossain Sircar.*

Counsel plead in this case that there are no reasons given why prosecutor and Goorooopersad should have been going with 195 rupees to cultivate indigo; that Goorooopersad does not include Beeshoo in his first statement; and that one witness states that they were seized from the *cutcherry*, while Bhyrub says it was in a *boat*.

We would remark that the sum of 195 rupees is clearly shewn to have been paid as ransom for the release of Bhyrub, and Goorooopersad; and is clearly shewn to have been brought from the Nulloah factory, about 1½ hours journey off, for that purpose, while the prosecutor was in duress in the boat; that the evidence in this trial sufficiently proves Beeshoo's participation in the offence charged; and the details are well supported by the testimony of the witnesses. Although too the seizure was at the *cutcherry*, the duress and extortion of the money were in the boat.

The prisoners pleaded before the Magistrate in this case that Barry and Co., had charged them from enmity, and that the charge was false; they relied too on the pleas of *alibis*, and the contradictions in the evidence for the prosecution. But the witnesses called for the defence do not substantiate it in the case of either prisoner; and we do not see reason, after a careful consideration of the evidence on both sides, to interfere with the conviction of the prisoners.

Referring to the facts stated in the concluding paras. of the letter of the Sessions Judge, which are more or less in evidence from the records of these trials also; and to the official order of the Magistrate cited below;\* and to the great and injurious preva-

\* Copy of Magistrate's order on Barry's petition.

*Nulloah, December 20th, 1856.*

"In accordance with the request contained in this petition, I am now at Nulloah, the scene of the disturbances enumerated herein. I have seen the ashes of the two bungalows which have been burnt down at this factory. I have ridden all over the indigo-lands, and the ryots have not been able to shew that these their paddy-lands have been sown with indigo, which is their charge against Mr. Barry. Mr. Tardivie, who has been appointed by the Moulvie to examine into the complaints of his ryots, accompanied us over the lands; he is perfectly satisfied with what he saw, that the ryots have no cause for complaint; that in fact Mr. Barry has not sown their paddy-lands with indigo; and states moreover that the real cause of quarrel is the purchase of a factory in the Pubna district which

lence of lawless affrays in connection with land in eastern Bengal, we sentence the prisoners, Beeshoo Sircar and Hossain Sircar, to imprisonment in labor with irons for fourteen years in banishment, in separate jails; and the other prisoners as recommended by the Sessions Judge.

We observe that it has been ordered that a recognizance should be taken from Moulvie Abdool Allee. The records before us, and the Magistrate's local investigation, (*Vide Note*) amply shew that such acts against the public peace, as those proved in these cases, could hardly take place, if the power and enforcement of the law were sufficiently effective to secure the punishment of the land-owner or farmer himself in all those instances where their cognizance or instigation could be fairly proved.

Thus, if recognizances under Act V. of 1848, have been taken from Moulvie Abdool Allee, it will be for the Magistrates, after taking the Moulvie's defence, to consider whether the result of these cases, or other reasons require them to proceed to recover the amount of such recognizances, or of any of them from the Moulvie above named, or others.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
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GOVERNMENT

*versus*

MOHOBUT SHEIKH ALIAS KOOKRAH.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Obhoychurn Bose, Deputy Magistrate under the dacoity Commissioner.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 16th April, 1857.

*Remarks by the Officiating Sessions Judge.*—This prisoner was named in a dacoity case reported on the 8th January last, he was sent for and appeared on the 13th idem, and denying that he was concerned in *that* dacoity, acknowledged that he had belonged to a gang of dacoits, and had committed three dacoities, the records of and witnesses to two of these

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Prisoner convicted and sentenced under Act XXIV. of 1843 on his own voluntary confessions duly corroborated. Remarks on the manner in which the record has been referred.

Mr. Barry wishes to work, and to which the Moulvie objects. I have thus arrived at the same conclusion as has Mr. Cockburn, viz. that the Moulvie Abdool Allee has caused his ryots in this part of the district to stop Mr. Barry's factory, and otherwise to ruin him, and then to charge him falsely with oppressive proceedings."



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have been submitted in this calendar; the witnesses Nos. 1, 2 and 3, clearly prove that a dacoity occurred on the night of the 4th December, 1855, in the house of Ramchunder Doss in which he was robbed of property valued at rupees 104-4-0; the witnesses Nos. 5, 6 and 7, in like manner prove a dacoity in the house of one Sobunzo Beneah, on the night of the 6th October, 1855, in which she lost property valued at rupees 464-2-9, the prisoner in confessing to these dacoities, gave an account of them fully borne out by the circumstances stated in their records, and thus shows that he must have been present at them, he pleads "guilty" in this Court, and his confessions are proved to have been voluntarily given, I therefore convict him of the crime charged, and recommend that he be imprisoned for life in transportation. This case was tried under Act XXIV. of 1843.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner confesses before the Deputy Magistrate and the Sessions Judge to the dacoities; and the witnesses prove the fact that they occurred. The records of the Foujdary Court also prove that fact, especially, the statement of Hasil Sheikh; and all these corroborate the confession of the prisoner.

We convict the prisoner under Act XXIV. of 1843, and sentence him to be imprisoned for life in transportation beyond sea under the same Act.

With reference to the Sessions Judge's statement that the prisoner "in confessing to these dacoities gave an account of them fully borne out by the circumstances stated in their records, and thus shews that he must have been present at them," the Sessions Judge is requested in future to be more specific, and to state precisely the circumstances to which he refers; and if they are on records of dates antecedent to the trial, he will be good enough to specify the No. of the *nulhee*, and the *page or pages* of it which may at once shew the matters adverted to. The Deputy Magistrate should do the same, with reference to his Abstract in column 14 of the Calendar.

The record keeper's return No. 5, of the record is no proper return at all and in future the Sessions Judge and Deputy Magistrate will be careful that a more full and precise one is sent.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND RAMSOONDER GHOSE

*versus*

DOORGADOSS KYBURT (No. 2.) AND RAJKISHORE POORAH (No. 3.) Moorsheda-  
bad.

CRIME CHARGED.—Dacoity in the house of Ramsoonder Ghose and plundered property to the value of Rs. 12½ belonging to his servants, Nobin Ghose and Radhamonee. 1857.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Baboo Obhoychurn Bose, Deputy Magistrate, under the Commissioner for the suppression of dacoity. Case of DOORGADOSS KYBURT and another.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 28th February, 1857. Prisoners (wounded)

*Remarks by the Officiating Sessions Judge.*—On the night of the 28th November last a gang of dacoits attacked the house of Ramsoonder Ghose in Kossimbazar, the thannah not being far off, the noise made by the dacoits reached the ears of the police, and the mohurrir Shunkur Singh, witness No. 1, and Kabeer burkundaz, witness No. 2, followed by Jetoo Singh, jemadar, witness No. 3, the darogah and three other burkundazes went to the spot; the mohurrir gallantly attacked the dacoits with a sword, but not being supported by the rest of the police, he was unable to seize or recognise any of the dacoits, but he wounded four or five of them. The case was reported, and while enquiries were going on, the witnesses Nos. 4 and 5, Luchmun Singh, and Golam Alee, burkundazes of thannah Burwah, received intelligence of the prisoner No. 2, Doorgadoss, being in Soojapore in that thannah in a wounded state, this was reported by the darogah on the 1st December, and the prisoner was apprehended and sent to the Magistrate; witness No. 6, Jelaluddeen, jemadar of that thannah, learnt that prisoner No. 3, Rajkishore, was in his sister's house (witness No. 21, Kishtomonee) wounded, and going there, he found the house-door locked on the outside, and on having it opened by Kishtomonee, he discovered prisoner No. 3, within it wounded, he apprehended him, and he was sent to the Magistrate by the darogah on the 3rd December. Remarks on proceedings of Deputy Magistrate, and on confessions in his department.

The prisoners were made over to the Deputy Magistrate under the Commissioner for the suppression of dacoity on the 12th December, and after having already denied having been concerned in this dacoity, they suddenly, as appears from the

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record, professed their willingness to confess and accordingly did confess before that Deputy Magistrate on the 12th January.

The report of their willingness to confess being signed by Babooram Chowbee, jemadar of the Deputy Magistrate's guard, I sent for him, and he testified to their having told him, of their own accord, and without his inducing them, that they wished to confess, and he accordingly reported it to the Deputy Magistrate.

These confessions are now denied before me by the prisoner, but are duly sworn to, and there is no doubt whatever that they really were made by the prisoners, and it is proved that they said they confessed because they heard that if they confessed before the "*huk hakim*" and named their companions, they would be released, the witnesses to the confession clearly prove that no such inducement was held out to them by the Deputy Magistrate, and that they freely confessed and asserted that they did so voluntarily; the prisoners merely deny the fact, they do not urge that they were forced or persuaded to confess, and therefore, however much they may have been personally induced to confess, by what they may have heard in the guard house from other prisoners, of which, however, there is no proof, I must consider their confessions as having been voluntarily given, and as legal evidence against them.

The prisoners on their first arrest and before me stated, prisoner No. 2, that cut bamboos had fallen upon him, and prisoner No. 3, that he fell down in a field, and was cut by a cow-bone. The evidence, however, of the Civil Surgeon, and the native doctor of the jail clearly shew that their wounds *could* not have been so caused, and that they were fresh, gaping sword-cuts when sent to the hospital. Prisoner No. 2, had one sword-cut on the upper and outward side of the right arm, and one on the back of the left shoulder-blade, and prisoner No. 3, had a sword-cut on the upper and outward side of the right arm.

The prisoners having totally failed to prove their statements regarding the manner they were wounded, and those wounds having been proved to have been fresh sword-wounds when they were seized, I convict them both, on strong presumption, supported by the voluntary confessions, of having committed a dacoity in the house of Ramsoonder Ghose in which property valued at Rs. 12-8, belonging to Nobin Ghose and Radhamonee was plundered, and sentence them each to imprisonment with hard labor and irons for (7) seven years from the 27th instant, and to a fine individually and collectively of Rs. 12-8, under Act XVI. of 1850. I also award a reward of 10 Rs. to each of the two burkundazes Luchmun Singh and Golan Alee and to Jellaluddeen jemadar for their discovering these prisoners, and as the law does not permit me to reward police for gallant be-

haviour, and as I consider Shunkur Singh mohurrir entitled to a handsome reward for so gallantly attacking the dacoits, I recommend him to the Magistrate for a reward of 25 Rs. which he will obtain the necessary sanction to give to the mohurrir.

I lay no stress on the alleged recognition of the prisoners after their seizures, by some of the witnesses, as it is quite plain that such recognition was merely alleged because of the wounds on the prisoners.

The case was tried under Act XXIV. of 1843.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal, urging that the prosecutor did not suspect them; that no property was found on them; and that the wounds on them were not the sword-wounds inflicted by the mohurrir.

The fact of the dacoity is clearly proved. The witnesses Nos. 1 and 2, clearly depose to the wounding of certain persons. Witness No. 1, says from the first at the police that he could recognize the persons, if he saw them; and he recognizes the prisoners at the Magistrate's and Sessions Judge's Courts. The testimony of witness No. 2, is not satisfactory in this; for at the police he says he could not recognize any, though he afterwards says he recognized and identified prisoners. These witnesses were together and nearest to the scene.

The prisoners did not confess to the police, but did before the Deputy Magistrate. They state to the Deputy Magistrate that they confessed to him *because they heard* that a confession in his department would result in their release. They deny at the Sessions that they did confess. It is sufficiently shewn that they did confess, and they do not plead that there was any inducement but their own general impression that it would benefit them.

The Civil Surgeon deposes that the prisoner's wounds are such as would be made by the mohurrir's sword which was before the Sessions Court; that they were quite fresh and clean-cut wounds; and could not have been made in the manner stated by the prisoners, i. e. in the case of Doorga Doss, from the fall of bamboos; and in that of Rajkissore, by falling when sick on some bones. None of the witnesses called by the prisoners substantiate any defence. On the contrary, some of them speak unfavorably, to the defence; for they state that the wounds of the prisoners are sword-cuts, and not such as would be inflicted otherwise.

We see no grounds to interfere with the conviction, and reject the appeal.

The Commissioner should instruct his subordinates to endeavour to prevent any such *general impression* as that confessions in his department result in releases; and we have to

1857.

May 30.

Case of  
DOORGADOSS  
KYBURT  
and another.

1857.      observe that the Deputy Magistrate does not seem in this case  
 to have tested the statements of the confessing prisoners in that  
 full and detailed and searching manner, which he should have  
 done.

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May 30.  
 Case of  
 DOORGADOSS  
 KYBURT  
 and another.

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## SUMMARY CASES.

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MAY.

1857.



SUMMARY CASES.

MAY, 1857.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 40 OF 1857.

RAJCHUNDER DOSS, AND OTHERS,—PETITIONERS,  
*versus*

MR. ROSE,—OPPOSITE PARTY.

*Blocking up a public road by building a house thereon.*

*Abstract grounds of appeal.*

24 Pergan-  
nahs.

1857.

I.—The public road in the village of Paikpara, having been blocked up by the defendant in this case, the petitioner made a complaint to the Magistrate, who rejected the petition only on the ground that there was another public road in that village; and the Sessions Judge in appeal upheld the decision. The petitioner's complaint was sufficiently proved by the evidence of witnesses as corroborated by the report of the Serjeant.

May 18.

Case of  
RAJCHUNDER  
Doss  
and others.

II.—The lower Courts in rejecting the petition did not state that the road in question was not in existence or in use, and they have acted contrary to the provisions of Act XXI. of 1841, in dismissing the petitioner's case.

Summary  
special appeal  
will not lie, in  
regard to Act  
XXI. of 1841,  
in connection  
with Act IV.  
of 1840.

III.—The lower Courts in dismissing the petitioner's case referred them to Act IV. of 1840. The road in dispute is a public road and not the petitioner's private property, and therefore Act IV. of 1840, is not applicable to such a case.

JUDGMENT.

The Counsel for the petitioner, Mr. Allan, admits, that these are the only pleas he has to urge.

Our opinion is that such an appeal will not lie, as a Summary special appeal, under Section 2, Act XXXI. of 1841, and under the precedent of Dalrymple's case, September 16th, 1851, by the full bench, page 1453.

We consider that Section 2, purposely restricts the appeal to this Court to criminal trials; and purposely *omits judicial proceedings other than criminal trials*, as not open to appeal to this Court. The omission is marked, and looked at with the context, clearly indicates this intent.



1857.      The precedent is a full bench precedent; and we are bound to follow it, till set aside by equal authority. It is urged by Mr. Allan, that subsequent decisions are opposed to the ruling quoted. We can find none of the full bench. The Counsel urges again that as there are such of many Judges subsequent to the full bench ruling, the full bench, and not one bench should consider how far those subsequent decisions may be correct. Mr. Allan adds that they certainly have affected parties in the face of the full bench precedent.

May 18.

Case of  
RAJCHUNDER  
Doss  
and others.

We do not object to refer the case to the full bench, on this ground, when Mr. Allan points out the cases he adverts to; but we reject the appeal on the grounds recorded by us.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

UGOREE OOPADHIEEA

*versus*

Bhaugulpore.

BECHOO MUNDER.

1857.

May 29.

Case of  
BECHOO  
MUNDER.

This case was referred to the Nizamut Adawlut, under Section 5, Act XXXI. of 1841, and Circular dated 18th March, 1842, by Mr. T. Sandys, Sessions Judge of Bhaugulpore on the 4th April, 1857, with the following report :

I have herewith the honor to submit my letter No. 73\* of

Remarks on  
whether the  
offence was  
burglary or  
theft.

\* *From the Sessions Judge of Bhaugulpore to the Officiating Magistrate of Bhaugulpore, No. 73, dated 18th March, 1857.*

Under Circular Order No. 9, of 17th July, 1851, I have the honor to request your explanation in the following case.

A garment and brass utensils valued at 1-4, two rings and eight 2-anna pieces were carried off by burglary, on the night of 27th May last, from the house of the prosecutor Ugoree Oopadheea. The next day, the prisoner, appellant, and two others, Shunker Pashan chowkeedar of a different place and Gokool Teteyhree were apprehended on the charge and during search of their persons the two stolen rings were found on the prisoner "Bechoo," appellant, and the eight 2-anna pieces with Gokool Teteyhree.

The Officiating Magistrate according to his decision statement column 7, convicted all the prisoners simply of theft "*chooree*" and sentenced each to thirty stripes and the chowkeedar to be dismissed. The sentence appears to have been carried out at once against the two, but was stayed by appeal as against the prisoner, appellant, only.

On going over the record, I find that the crime could not be possibly treated under any other head than that of stolen property acquired by burglary. The complaint, the evidence of the witnesses, and the local enquiry by the police vide map No. 3, are all conclusive to such effect. Indeed without it, there can be no truth in the prosecution. A chowke-

the 18th ultimo, and the Magistrate's reply No. 248\* of 1st instant, relative to the case together with its record for the orders of the superior Court.

It would be premature to express any opinion on the real merits of the case, but trivial or otherwise I do not observe how it can be treated otherwise than as one of burglary, and for the reason there appears to be no other alternative than to quash the Officiating Magistrate's proceedings as illegal.

I beg at the same time to observe that Mr. Lushington is a zealous, able young officer, generally most anxious and cautious in the discharge of his duties and in the present case seems to have acted under misapprehension.

*Resolution of the Nizamut Adawlut.*—(Present : Messrs. G. Loch and H. V. Bayley.) No. 431, dated 29th May, 1857.

The Court, having perused the papers connected with the case of Bechoo Munder, observe that the Officiating Magistrate had the statement of the prosecutor, both at the thannah and before him, that there was a burglarious entry. He punished the parties as if for simple theft; but before doing so, he should have carefully gone into the question, whether there had been burglarious entry or not. There is no *sooruthal* of the *seend*, as there should have been, but there is a distinct statement in the jemadar's map, as to where the locality of the burglarious entry was. Under the circumstances the Officiating Magistrate's order, awarding the measure of punishment himself, was wrong and illegal.

dar also was concerned. These circumstances take the case beyond the scope of petty larceny to which alone the provisions of Act III. of 1844, are applicable and I can therefore only regard the Officiating Magistrate's sentence as passed under some misapprehension, and illegal.

\* *From the Officiating Magistrate of Bhaugulpore to the Sessions Judge of Bhaugulpore, No. 248, dated 1st April, 1857.*

In reply to your letter No. 73, dated 18th March, requesting to know how it came to pass that in a certain case where it appeared that defendants were found with stolen property, evidently acquired from a house which had been burglariously entered, I made Act III. of 1844, to apply, and administered the *rutan* to two and merely dismissed the chowkeedar who was concerned in the robbery, I beg in the first place to say, that the sentence passed on the chowkeedar was unaccountably lenient and I fear that I must consider myself in fault so far. As regards punishing the rest with flogging, if any thing, I erred again on the side of leniency; but in my opinion, though the sentence in the strictest sense of the law was wanting in legality, yet the punishment was otherwise appropriate. There are some doubts as to the positive fact of *burglary*, no description of the actual hole being sent as is usual in this district, and when we look at the small amount of property made away with, even though it were by burglary, the highest punishment for petty larceny did not seem to me mis-given.

I beg at the same time to express my regret for not having adhered more strictly to the letter of the law.

1857.

May 29.

Case of  
BECHOO  
MUNDER.

1857.

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May 29.

Case of  
BACHOO  
MUNDER.

The Officiating Magistrate should be warned to be careful not to repeat this error ; specially as the corporal punishment he inflicted cannot now be redressed.

The Court observe that the darogah should have made a proper record, *besides* the map, of the nature of the hole or means of burglarious entry.

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# REGULAR CASES.

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JUNE.

1857.



JUNE,

1857.

REGULAR CASES.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND KUNHAE ALIAS CHACOWREE

*versus*

MUSST. BUNDHOO.

Patna.

1857.

CRIME CHARGED.—Stealing Ghuseeta Chokra the son of Kunhaee aged about two years, and other articles of property belonging to the latter valued at Rs. 7-0-9 with intent of selling the child and appropriating the property to herself.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Moulvee Moula Bux, Deputy Magistrate of the city of Patna.

Tried before Mr. R. N. Farquharson, Sessions Judge of Patna, on the 8th December, 1856.

Remarks by the Sessions Judge.—The prisoners plead *not guilty*.

Kunhaee also called Chacowree, is father of the child stolen. The prisoner Bundhoo formerly a Hindoo now a Musulman was some years ago in his service as a nurse. She had now come to see him. He kept her at his house. On the day in question she carrying the child Ghuseeta accompanied him, his wife, and mother-in-law, towards the river where they went to bathe, it being the Dussehrah festival, they had only gone a few yards when prosecutor having forgotten something sent her back for it, instead of going back she started off with the child westward and, taking an *ekka* by the way, arrived at the village of Bankipore close to the thannah of that name here, she went to the house of one of the other women prisoners, it does not clearly appear which, and through them pawned one of the child's ornaments for nine pice to pay for the *ekka* and then tried to sell the child. A servant of Mr. Elliott's by name Boodhoo, witness No. 11, hearing of the sale proposed, sent for the child which was taken to him by Musst. Umda, witness No. 12, seeing that the child was a Hindoo and had marks of

June 3.  
Case of  
Musst. BUN-  
DHOO.

Prisoner  
convicted of  
stealing a child  
with intent to  
sell; and of  
stealing other  
property. Re-  
marks on fram-  
ing of charges.

1857.  


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 June 3.  
 Case of  
 Musst. BUN-  
 DHOO.

ornaments on its arm he thought matters suspicious and gave notice at the thannah. The thannadar sent two burkundazes, witnesses Nos. 1 and 2, to bring the woman who offered the child for sale to the thannah. The woman Bundhoo was brought and made full confession of the facts which she repeated again before the Magistrate. Before this Court she denies the previous confessions, but witnesses Nos. 3, 4, 6 and 7, fully substantiate her having made them freely before the thannadar and Magistrate as described in the record.

Bundhoo refuses to say any thing in her defence. Luchmun says she certainly took the ornament to the pawnbroker, but did so at the instance of Jumna knowing nothing and suspecting nothing of the theft of the child; Jumna says she knows nothing of the matter.

The law officer acquits the prisoners Nos. 3 and 4, convicting Bundhoo prisoner No. 2, of the crime charged in the calendar in which verdict I concur.

Bundhoo's guilt is abundantly proved by the facts sworn to by the prosecutor and corroborated by the general facts of the case as derivable from the evidence before the Court. Her own confession is moreover full and perfectly reliable in its main features. I convict Musst. Bundhoo prisoner No. 2, of stealing Ghuseeta Chokra with clothes and ornaments valued at Rs. 7-0-9 and sentence her to five (5) years' imprisonment with labor suited to her sex.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner has confessed to having stolen the child, as also property belonging to the prosecutors. From the evidence of witnesses Nos. 11 and 12, it is clear that she attempted to sell the child at Bankipore. We consider the charge fully proved, and reject the appeal. The Court observe that the charge might have been divided into three or more counts: for instance, there might have been a count for the taking away or theft of the child; another for the theft of the ornaments; a third count might include the prisoner's intent in stealing the child; and a fourth, the possession of the stolen property knowing it to be stolen;—so that in case the prisoner was acquitted on some counts;—she might be convicted, if guilty, on others.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND JUGGUBUNDOO CHATTERJEEA

*versus*

KOMUROODEEN.

Backergungo.

**CRIME CHARGED.**—1st count, wilful murder of Shurreutoollah ; 2nd count, riot attended with the culpable homicide of Shurreutoollah and the wounding of Uzgur and Abdool Hossein on the 2nd January, 1854.

1857.

June 5.

Case of  
KOMUROODEEN.

**CRIME ESTABLISHED.**—Riot attended with the culpable homicide of Shurreutoollah and the wounding of Uzgur and Abdool Hossein.

**Committing Officer.**—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Prisoner convicted, his identity being established.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 16th February, 1857.

Remarks on Sessions Judge's record of his judgment in Statement No. 6.

**Remarks by the Sessions Judge.**—In concurrence with the *fulwa* of the law officer, I convict the prisoner of riot attended with culpable homicide and sentence him as shewn below.

This case has been before the Court and previous convictions have, on appeal, been upheld by the Sudder Court: The prisoner was recognized and named at the *thannah* before the Magistrate and in this Court.

**Sentence passed by the lower Court.**—To be imprisoned for five (5) years with labor and irons.

**Remarks by the Nizamut Adawlut.**—(Present : Messrs. G. Loch and H. V. Bayley.) The prisoner appeals, and pleads that he is *not the person* implicated in the riot, and that he has been falsely charged through the machinations of the zemindar, Muddunmohun Roy, who, on account of the prisoner's refusing to sell his "*hawala*" to him, determined to ruin him, and has proved the charge against him by the false evidence of his dependent ryots. Prisoner adds that Komuroodeen, the real offender, has absconded ; and is concealed at Soodaram in Zillah Noacolly ; and that in proof that he, prisoner, is not the party implicated, the Naib Nazir, when appointed to act as darogah of *thannah* Angooria, apprehended him, and another person of the same name, son of Mathabooddeen, but on enquiry, it was proved that the real offender had escaped, on which prisoner was released.

The prisoner urges that he presented two petitions to the Magistrate setting forth these circumstances, and praying for local enquiry and a third petition to the Judge ; but that these



1857. authorities have convicted him without entering into his defence.

June 5.

Case of  
KOMUROO-  
DEEN.

In the defence before the Magistrate, we find no mention of there being another Kumuroodeen, nor do we find any petitions presented to that officer filed with the *nuthee*. The Sessions Judge's statement of conviction gives a most meagre account of the grounds for that conviction, and does not enter into and meet the plea urged in the defence, and in a petition filed by the prisoner, which last in fact forms the essential part of that defence. The Court, however, after a perusal of the record, find sufficient evidence satisfactorily to prove the identity of the prisoner. Witness No. 1, identifies him as Kumuroodeen, the brother of Zahurdeen said to be a leading party in the affray. This we find to be the case. (Vide Nizamut Adawlut Reports Vol. 4, Part II. page 49.) The prisoner is also said to be a resident of mouzah Hullowa, which is also the case; and with the exception of witness No. 1, the other witnesses speak of one Kumuroodeen of mouzah Hullowa alone being engaged in the riot, and identify the prisoner as that one person. The witness, No. 2, is a relative both of the prosecutor and prisoner, and identifies the latter as the party concerned in the riot. The witnesses for the defence do not satisfactorily substantiate the prisoner's plea. We reject the appeal.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Behar.

1857.

GOVERNMENT

*versus*

MULLOOAH HUIJAM.

June 6.

Case of  
MULLOOAH  
HUIJAM.

**CRIME CHARGED.**—Murder of Mussamat Bowdhee, his wife.  
**Committing Officer.**—Mr. H. Davies, Officiating Deputy Magistrate of Sherghotty.

Prisoner convicted on violent presumption; but sentenced to transportation for life, on failure of clear evidence that his hand committed the deed.

Tried before Mr. T. C. Trotter, Sessions Judge of Behar, on the 9th April, 1857.

**Remarks by the Sessions Judge.**—The Government was made prosecutor in this case, because Jurry, the brother-in-law of Mulwah, said that he had no charge to bring forward.

The first witness examined or Gunga, who is an uncle of the prisoner, says that at Raneedewah there was an outcry to the effect that Mulwah had killed his wife and fled; that about a month after, he heard of it, on a *berisput*, the date or month he

does not remember, Mulwah came in the evening to his house on which he immediately gave information to the chowkeedar named Dhoorun, who seized him, and carried him off to the thannah; that he did not, while Mulwah was with him, question him as to the murder.

Dhoorun, witness No. 2, confirms what has been stated, regarding the manner in which Mulwah was apprehended. He says that he had previously been

Witness No. 2, Dhoorun Chowkeedar. furnished with his *houlia*, by the police of the Mujiawa thannah, in consequence of its being abroad that the prisoner had killed his wife; and that such publication was not confined to one spot; but was spread around, wherefore he at once seized him; that Mulwah, though he was asked about the murder, denied the charge.

The witnesses Nos. 3 and 4, or Chuttree Singh and Dirjun Singh, depose that their houses are close to the prisoner's; that on a Wednesday, in the month

Witness No. 3, Chuttree Singh. of Assin, they went to his house, and there saw on a *charpoy* the body of Mussamut Bowdhee, which was not at all decomposed, and wrapped only in the clothes she wore; that there was a cut of about four inches in length on the left side of the neck; that such gash was two in depth, and one and a half in breadth, apparently inflicted with a knife; that there was a great deal of blood on the dress, *charpoy* and floor of the house; and witness No. 3, adds that he saw a razor in the house in a bag; but on it there were no marks of blood.

Lekwah witness No. 5, who is the Gorait of the village, affirms that in the month of Assin, on Wednesday morning, he was

Witness No. 5, Lekwah. told by Roopchund and Mussamut Gungia that their son had killed his wife; that he immediately gave information at the thannah, and saw the body, on the neck of which there was a cut as has been described; that Roopchund said he had given his son two razors, one of which was found; but neither alluded to their having witnessed the murder: that the razor had no marks of blood upon it, nor had the body any covering save the clothes it wore, and which was divested of jewels; that Mussamut Bowdhee had no intimacy with any one, nor was he aware of any quarrel.

Roopchund No. 6, the father of the prisoner, deposed that on Tuesday evening, in the month

Witness No. 6, Roopchund. of Assin, he saw his son at his house; that they lived apart, in houses, which were only separated by a low wall, nevertheless on that evening he saw him, and prevented his having a quarrel with his wife; that he cannot say whether he afterwards slept in the house; but having

1857.

June 6.

Case of  
MULLOOAH  
HUJJAM.

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Case of  
MULLOOAH  
HUUJAM.

occasion to go out early on the Wednesday morning, he observed that the *tatee* in Mulwah's house had fallen down, on which he called his son by name; that he did not answer, consequently he told his wife to go and see if he was in his dwelling; that on her going in she saw the lifeless body of Bowdhee on the *charpoy*, with a deep wound on the neck; that she was laying on her right side, the *charpoy* and ground underneath being stained with blood; that search was made for Mulwah, who was not found for nearly a month, and that he was mad for different periods, and so considered to be mad, because he used to beat his mother. This witness adds that his daughter-in-law had no intimacy with any one; but that she had said she would marry again, and had left her house in the month of Jet, in dissatisfaction.

The witnesses Nos. 7 and 8, or Roopoo and Ujjaib, swear that

|                        |                                 |
|------------------------|---------------------------------|
| Witness No. 7, Roopoo. | they saw the prisoner at his    |
| " " 8, Ujjaib Coormee. | house on the Tuesday; that they |
|                        | heard from his mother on the    |

Wednesday morning that he had murdered his wife; that no suspicion was attached to any one else, nor had Mussamut Bowdhee any *ashnay* or intimacy with any one; that the prisoner was suspected, because two razors were given to him by his father, one of which only has been found; that they never heard of his being mad at any time.

The evidence of the witnesses Nos. 9 and 10, hardly differs from that which has preceded.

|                                 |                              |
|---------------------------------|------------------------------|
| Witness No. 9, Bhurrot Coormee. | They say they first heard of |
| " " 10, Bhugun Chumar.          | the murder from the father   |

and mother of Mulwah; that no suspicion attached to any one else; that there was only the neck wound on the body; and the right hand was not under; but clear of it, lying on the breast, while the first of these witnesses maintains that the husband and wife were constantly quarrelling, and had quarrelled on the Tuesday, the latter asserts he knew of no dissension.

The witness No. 11, Mussamut Gungia, the mother of the pri-

|                                |                                  |
|--------------------------------|----------------------------------|
| Witness No. 11, Gungia female. | soner, declares that Mulwah was  |
|                                | in his house on the Tuesday, and |

that she entered it on the Wednesday morning, in consequence of her having been told by her husband that the *tatee* had fallen down; that she found, on entering, the body of Mussamut Bowdhee, her daughter-in-law, on a *charpoy*, which was inclining towards the right side; that the throat was cut upon the left side, the right hand detached from the body; but on it there was no blood, though there was blood both on the *charpoy* and the ground: that Mulwah and his wife had a quarrel on the Tuesday evening, which was put a stop to by her husband, and her daughter-in-law who had no *ashnay* with any one, had declared she would marry again, though she had never said with whom; that

Mulwah had never shewn symptoms of madness, and after the Tuesday evening was not seen or heard of, for a period of nearly two months; that she suspected her son, because one razor could not be found of the two, which had been given to Mulwah by his father.

The witness No. 12, Bhemul chowkeedar, states that on

Tuesday he saw Mulwah at his house, and heard of the murder of Mussamut Bowdhee from the father and mother; that he heard no noise during his beat, but he naturally attached suspicion to defendant, from his having been last seen at the house; that Mussamut Bowdhee, though she had no *ashnay* with any one, did not live on good terms with her husband, and threatened to marry again; that the body, when he saw it, had no wound on it, save the one on the throat, and was not resting on the right hand, and that there was no blood on the head; only on the clothes, the *charpoy*, and the ground below it.

The prisoner, Mulwah, denies his guilt; says that he went in the beginning of the month of Assar to Benares, where he remained for three months, endeavouring to get service; that having failed to do so, he returned to Raneedewa, and hearing of his wife's death, enquired of his father and mother how she had been murdered, but they could not tell him, consequently he went to his uncle's house at Gara, and asked in like manner, but he said, he did not know.

In the Magistrate's Court no mention is made by the prisoner of his return home. On the contrary, he distinctly stated that he did not go to Raneedewa, because others were searching for him from suspicion.

The witnesses Nos. 13 and 14, or Ghumundee and Bisheshur,

Wit. No. 13, Ghumundee Mullah.

„ No. 14, Bisheshur Singh.

on being interrogated say, they know nothing and No. 13 deposes that the prisoner did

not go to his house.

The law officer finds the prisoner guilty of the murder of his wife on “strong presumption,” and holding that *kissas*, under such circumstances, is barred, considers him liable to punishment by “*decut*.”

With the finding, I concur, because the following facts are clearly proved by the record:—firstly, that the prisoner was seen in the company of his wife, at his home late on the Tuesday evening; secondly, that at that time he had quarrelled with her, and had previously been living on bad terms; thirdly, that early on the Wednesday morning he had absconded from the house in which his wife lay murdered, and was not heard of for nearly a month, though search every where was made for him; fourthly, that his wife did not live an immoral life, and had formed no attachment or intimacy with any other to create

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a ground of suspicion, and fifthly, because it is shewn by the defendant's own answer and his witnesses in this Court, that his statement is untrue; and from that given to the Magistrate that suspicion must attach to these words made use of by him, and which it may be said are pregnant with meaning. "I did not go to Raneedewa, because others were searching for me from suspicion." If truly innocent, why should his own home have been avoided, or why, even if suspicion had been attached, should the innocent man have abstained from court-ing an enquiry? But it is not stated how, or from whom it was heard that suspicion attached to him, and in the absence of such information, we may believe that the guilty conscience only pronounced the suspicion here referred to. Besides, it cannot be supposed for a moment that death was self-inflicted. No instrument has been discovered, which it necessarily must have been. The hand which had committed suicide after such a fashion must have retained traces of its acts, blood would have been spilt elsewhere than on the clothes next to the wound, the *charpoy* and the ground beneath it. That it was foul murder cannot be doubted, still two links I conceive are wanting to bring the charge wholly home to the prisoner, the one is the absence of the weapon used, the other the want of a competent "*post mortem*" examination, and the evidence of the medical officer, which would have shewn what lethal instrument had been employed. Under these circumstances, I cannot recommend death; but would submit that the prisoner should be imprisoned for life in transportation beyond seas.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It is clearly in evidence that disagreements occurred between prisoner and deceased; that there was a quarrel on the evening of the death of the deceased; that prisoner was seen with deceased to a late hour that night; that next morning deceased was found with her throat cut by a razor or similar instrument; that prisoner had two razors, one of which was found by the bed of deceased and the other was not found at all; that prisoner was missing next morning, and was not apprehended for three months after, when he was found in his uncle's house, six *coss* off his home. The prisoner's defence is contradictory as to his *alibi*, and there is no proof of it. Those, in whose house he says he was, deny his statement.

There is thus violent presumption that prisoner was concerned in the deed, but whether his hand alone perpetrated it or there were others, and he was not the principal, are points on which there is no sufficient evidence, direct or circumstantial. Referring to this doubt, we sentence the prisoner to be transported beyond seas for life, instead of passing a capital sentence.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND MUNOO SIRDAR

*versus*

KHADEM SIRDAR (No. 1,) AND PURAN\* SIRDAR  
(No 2.)

Jessore.

1857.

CRIME CHARGED.—1st count, No. 1, wilful murder of Amir Sirdar by striking him on the second of January 1857, corresponding with 20th Poos 1263 B. S. from the effects of which he died the next day ; 2nd count, No. 2, accomplice in the above murder.

June 6.

Case of  
KHADEM SIR-  
DAR  
and another.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 21st April, 1857.

Prisoner  
convicted. At-  
tention called  
to Circular  
Order 22nd  
May, 1846,  
No. 229.

*Remarks by the Officiating Sessions Judge.*—The prisoner No. 1, who had been at work in a date garden not far from the house of the deceased, went there towards the close of the day, accompanied by prisoner No. 2, and some conversation ensuing, in which prisoner No. 1, taxed the deceased with having stolen his *chillies* from his field, he, the prisoner rushed on deceased and struck him three or four times with a *balleedhara*, or long piece of wood used for sharpening iron weapons. The deceased fell and never spoke again, nor recognised any one. The next night, Saturday the 21st of Poos, he died. The prisoner No. 2, struck the deceased with his hands, when he was down. The witness Poddo (No. 1,) the wife of Amir, certainly says that prisoner No. 2, had a weapon similar to that of prisoner No. 1, but this is not corroborated by the other witnesses (Nos. 2, 3, 4, 5 and 7.) There was no previous enmity between the parties, and nothing can be made out as to any quarrel concerning *chillies*, except that the deceased had two fields of *chillies* of his own. The written evidence of the Civil Assistant Surgeon, who deposed before the lower Court, but who had left the station before the Sessions came on, is attested by two witnesses (Nos. 15 and 16.) It shews that the death was occasioned by a fracture of the left temporal and parietal bones of the skull. The circumstances of the assault, which tally with this, are fully and clearly proved by the evi-

\* Convicted and sentenced by the Officiating Sessions Judge.

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Case of  
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and another.

dence of witnesses Nos. 2, 3, 4, 5 and 7. They say that the blows were given with force, that no very gross terms of abuse were used by the deceased, in reply to the prisoner's charge, and that the two prisoners ran away immediately.

The prisoner No. 1, before the Magistrate and the Sessions Court, stated that Amir, the deceased, made a burglarious entry into his house with some one else, that he, prisoner, made a blow at him, which lighted on him he does not know exactly where: and that he complained at the thannah, against the deceased, the next day, who was, after being struck, immediately rescued by his friends and neighbours. The prisoner No. 2, tries to prove that he was in a village about two or three miles off, that day, but totally fails to do so. The prisoner No. 1, shews that he brought the neighbours next morning to see a *sind* (witnesses Nos. 30 and 31), but there was no one to prove the fact of either entry or outcry the night before, and the police investigation disproved the whole of the story, which, indeed, was quite unsupported. The jury found the prisoner No. 1, guilty on the 1st count and the prisoner No. 2, guilty on the second. I concur with them.

I give full credence to the testimony of the witnesses to the assault and can find no sign of enmity in them against either of the prisoners. The deceased was a very old man. The weapon used by the prisoner No. 1, is a heavy piece of wood. It is shown that he struck the deceased several times with much force. It is not shown that there was any provocation given, which could lessen the character of the offence. I consider the charge of wilful murder clearly made out against prisoner No. 1. The only thing that is not proved is that he went, *deliberately*, with *intent to murder* the old man. But he had no sort of excuse for the violence he showed, and malice may be legally and fairly presumed from the act proved against him. Under the circumstances of the case, though considering that the prisoner is young and strong and that the deceased was old, weak and feeble, I do not think a capital sentence or transportation necessary, but I recommend that prisoner No. 1, be sentenced to imprisonment for life, with hard labor in irons at Allipore, and I sentence prisoner No. 2, to imprisonment with hard labor in irons in this district for the space of five years. The warrant for this latter prisoner will not be issued until the receipt of the orders of the Sudder Court on the first prisoner.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court, having perused the evidence for the prosecution, and the defence of the prisoner, Khadem, (which is contradictory in the police and before the Magistrate) concur with the Sessions Judge as to the guilt of the prisoner, and sentence him, as proposed by the Sessions Judge.

The Court request that in future the Sessions Judge will observe the rule in C. O. 22d May, 1846, No. 229, viz. "the Sessions Judges when proposing a sentence of imprisonment for life in Allipore jail to record their *reasons* for not recommending one of transportation beyond sea."

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Case of  
KHADEM  
SIRDAR  
and another.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND JUGGOO BUNDOO CHUT-  
TOORJEA

*versus*

KUNHAYI SIRDAR (No. 1)\* KUNHAYI CHOWKEE-  
DAR (No. 2)\* MODOO SHIKDAR (No. 3)\* AND  
PUNJOO SHIKDAR (No. 4, APPELLANT.)

Backergunge.

CRIME CHARGED.—1st count, riot attended with the severe wounding of the prosecutor and plunder of property valued at Company's Rs. 2,264-4; 2nd count, forcibly carrying off and illegal confinement of prosecutor and his son, Shamachurn Chut-toorjea.

1857.

June 8.

Case of  
PUNJOO SHIK-  
DAR.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Bakergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Bakergunge, on the 9th April, 1857.

Prisoner con-  
victed against  
the opinion of  
the Sessions  
Judge.

*Remarks by the Sessions Judge.*—In concurrence with the *fatwa* of the officiating law officer, I have convicted and punished three out of the four prisoners committed. A difference of opinion between the law officer and myself as to the guilt of the remaining prisoner No. 4, Punjoo Shikdar, renders this reference necessary. The law officer would convict, I would acquit. Pending this reference, the prisoner will be admitted to bail.

Remarks on  
statements of  
witnesses to  
the police.

This case has been before the Court in appeal and the Court were pleased to confirm\* the

\* Vide the Court's proceedings under date the 14th January, 1857 on the trial of Nilkomul Chucker-buty and others.

sentence passed by this Court on other parties concerned in this case.

The prisoner No. 4, Punjoo, is not named in the petition presented by the agent† of the plaintiff at the thannah, his name is also omitted in the

† Goluckchunder Panec.

\* Acquitted by the Sessions Judge.



1857. statements of some of the witnesses for the prosecution, before  
 June 8. the police. It appears, that the prisoner No. 4, is at enmity  
 Case of with Juggutchunder, witness No. 25, in the former trial, and it  
 PUNJOO SHIK- is probable that the prosecutor has named the prisoner to  
 DAR, please Juggutchunder, who gave very material evidence in favor  
 of the prosecutor.

There can be no doubt that the prosecutor's case is a true one, but the Court must be well aware that it is not unusual for names of parties, not present, to be imported into a case to satisfy some sinister purpose.

The petition, which was presented at the thannah by Goluckchunder Panee, the agent of the prosecutor, gives a full detail of the outrage, and the names of many parties are given as concerned in the outrage, if the prisoner No. 4, had really been a party, he would doubtless have been named in the above petition.

The prisoner denies the charge and sets up an *alibi*. I do not consider the evidence for the defence entirely satisfactory and trustworthy, but I am still of opinion for the reasons stated above that the prisoner should be acquitted.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The reason assigned by the Sessions Judge in the 4th paragraph of his letter of reference, viz., that the name of the prisoner is not entered in the petition presented by Goluckchunder Mitter at the thannah, is equally applicable to the prisoner Modoo, convicted and sentenced by the Sessions Judge. The Court would also observe that the statements made by witnesses to the police, not being given on oath, cannot be admitted as legal evidence, either for or against the prisoner. On reference to the records of the trials, before the Magistrate and Sessions Judge we find the prisoner is named by the prosecutor and the witnesses in their evidence before both Courts; but till the prisoner was called upon for his defence by the Sessions Judge we find no mention of the name of Juggutchunder as the party at whose instigation the prisoner was falsely implicated, nor is this plea proved by any evidence. Further this hypothesis, urged by the Sessions Judge, cannot be permitted to have weight in opposition to the direct evidence for the prosecution; the more particularly as the *alibi* set up by the defendant is by no means satisfactorily proved. The Court therefore, convict the prisoner Punjoo Shikdar, and sentence him to be imprisoned for five years with labor and irons.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND MUSSAMUT SHORALEE

*versus*

UTUM HAJUNG (No. 4,) NUBEEN HAJUNG (No. 5,) PALAN HAJUNG (No. 6,) KANTO HAJUNG (No. 7,) AND BOODHOO HAJUNG (No. 8.) Mymensingh.

CRIME CHARGED.—Wilful murder of Dawah Hajung.

1857.

Committing Officer.—Mr. C. E. Lance, magistrate of Mymensingh.

June 9.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 6th April, 1857.

Case of

UTUM

HAJUNG

and others.

*Remarks by the Sessions Judge.*—Under the aggravated nature of the case I consider that the punishment I am competent to award is not sufficient to meet the ends of justice.

Prisoners convicted. Remarks on the commission of crime when drunk.

It appears from the evidence recorded on the trial and the confessions of the prisoners before the police and the Magistrate, which have been verified by the subscribing witnesses thereto, that one day in Maugh last (31st January,) the deceased went to the house of prisoner No. 7, Kanto Hajung, to join a drinking party and after having regaled himself there with his companions, the prisoners and witnesses Nos. 1 to 6, till midday, he returned with them to the house of one Uddun Hajung, where they also had liquor and at about one *puhur* after nightfall when the party broke up, the deceased and the prisoners were proceeding home and when they came under a tamarind tree on the bank of the river Sootee the prisoners attacked the deceased and severely assaulted him and he immediately expired, that when the deceased had ceased to breathe they carried the corpse to a place called “Dum Dum” and buried the body, that the prosecutrix being anxious for her husband’s safety owing to his not returning home, instituted enquiries and found a place newly covered with earth which she removed and found her husband buried there, that she then called the villagers and the chowkeedar and they exhumed the body and made it over to the police.

The Civil Assistant Surgeon deposes that death ensued from injury to the brain and lungs; that the skull was fractured extensively on the front part, and the upper part of the breast-bone was smashed and driven into the chest; five ribs on the left and four on the right side were broken and the cavity of the chest was full of blood.

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Case of  
UTUM  
HAJUNG  
and others.

The prisoners admitted before the police and the Magistrate that when in liquor they severely assaulted the deceased, and that he died on the spot and that three of them carried the corpse to Dum Dum, and there buried it. In this Court, however, they retract their confessions and plead that their mofussil confessions were extorted by ill-treatment and they were instructed to repeat their confessions before the Magistrate; No. 4, added that there was no occasion for him to kill the deceased as he was related to him; that witness No. 1, Fep Hajung and others gave false evidence against him owing to a quarrel existing between them regarding their community; that the occurrence is said to have taken place at night when it was impossible for the witnesses to have recognised them from the distance they state they were; that the Civil Assistant Surgeon deposed to the deceased's skull having been fractured by blows of a *lattee*, but it would appear that they had no weapons in their hands, Nos. 5, 6, 7 and 8, relied on the defence made by No. 4.

The law officer is of opinion that the charge of wilful murder is not proved against the prisoners, but considered them guilty of homicide and liable to punishment by *acoobut*. I concur in this verdict as there is no proof that murder was contemplated by the prisoners. The evidence, however, which is quite clear and consistent shews that the prisoners cowardly attacked the deceased (five persons to one) and brutally ill-treated him which terminated in immediate death, it being fully established on the evidence of witnesses, Nos. 1 to 6, that they witnessed the prisoners' assaulting the deceased and of the latter having died immediately afterwards, and it is also equally clear from their evidence that when the deceased fell and ceased to breathe, prisoner No. 7, ran to them, the witnesses, and informed them that he and the other prisoners attacked the deceased. The prisoners pleaded before the Magistrate as a ground of palliation that they assaulted the deceased when in a state of inebriety, but I remark that there is a total absence of proof of such unsoundness of mind as to have rendered them unconscious and incapable of knowing at the time that they were committing an unlawful act; on the contrary it is in evidence that they were in perfect possession of their senses, which I have every reason to believe, as they immediately attempted to conceal the murder by burying the corpse underground at a considerable distance with a view to prevent any clue to the same being found, and even admitting that they were intoxicated, it cannot in any way exculpate them. Taking therefore, the aggravated nature of the assault into consideration, I recommend that a sentence of (14) fourteen years with labor and irons be passed on the prisoners.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The charge having been clearly

proved against the prisoners by their own confessions to the police and to the Magistrate, and by the evidence of the eye-witnesses, the Court convict the prisoners of the culpable homicide of Dewah Hajung; and under the peculiar circumstances of the case, especially that the assault was not inflicted by any obviously deadly weapon, sentence them to be imprisoned, with labor and irons, for seven years. The Court observe that though drunkenness is no valid excuse for the commission of crime, yet the fact that the homicide was committed while the parties were in a drunken state, and that no weapons manifestly dangerous to life were made use of, may be taken in this case to indicate the absence of malignant design; and that point is not otherwise apparent.

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Case of  
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and others.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

KANTAYSUR MUNDUL

*versus*

NOBAN RAJBUNSEE.

Assam.

CRIME CHARGED.—Dacoity attended with wounding committed in the house of Kantaysur Mundul on the night of the 6th November, 1854, in which property to the value of Rupees 1,163 was plundered.

1857.

June 10.

Case of  
NOBAN  
RAJBUNSEE.

CRIME ESTABLISHED.—Dacoity attended with wounding.

Committing Officer.—Captain Agnew, Magistrate of Goalpara.

Tried before Major H. Vetch, Officiating Deputy Commissioner of Assam, on the 20th January, 1857.

Remarks by the Officiating Sessions Judge.—The prisoner has pleaded *not guilty* throughout.

Three of the gang, by whom the dacoity was committed, and now convicts in the Goalpara jail, have all deposed to the prisoner having been one of their gang and recognize him as such, and in all the previous proceedings in the case his name has held a prominent place in the confessional statements made by others of the gang, this is further confirmed by his not being found, when the others were apprehended.

The prisoner, in his defence, has named a number of witnesses in order to prove that he had removed into Cooch Behar prior to the commission of the dacoity, but none of these witnesses have been forthcoming.

Prisoner convicted on depositions of witnesses, (under Act 19 of 1837,) who were prisoners convicted in this dacoity. Remarks on the preparation of the Calendar.

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Case of  
NOBAN  
RAJBUNSEE.

I convict the prisoner of dacoity attended with wounding on the evidence of the convicts, the implications in their confessions, and the prisoner's disappearance at the time.

*Sentence passed by the lower Court.*—Fourteen years' imprisonment with labor and irons from 20th January, 1857.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The depositions of the witnesses, now prisoners in jail, correspond with their statements before the Police, the Magistrate and Sessions, as confessing prisoners in this very dacoity; and there is no reason to doubt their truth. The prisoner could adduce no witness to support his alleged *alibi*, or the plea of the enmity of the witnesses. We reject his appeal.

The Deputy Commissioner should submit English as well as Bengalee Calendars.

PRESENT :

G. LOCH and H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND SEDOO MULLICK, PROSECUTORS  
*versus*

SHEIKH NUEEM (No. 1, APPELLANT,) SHEIKH AKIL (No. 2, APPELLANT,) SHEIKH PUNJAB (No. 3,\*) SHEIKH SEEDOO (No. 4, APPELLANT,) SHEIKH MO-  
TTEEOOLLA (No. 5, APPELLANT,) SHEIKH TAJOO  
CHOKRAH (No. 6,) SHEIKH ZUHOOR CHOKRAH (No. 7,) SHEIKH LALOOK CHOKRAH (No. 8,\*) AND  
SHEIKH HAROO CHOKRAH (No. 9.)\*

Hooghly.

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Case of  
SHEIKH  
NUEEM  
and others.

Prisoners' ap-  
peal rejected,  
the direct and  
circumstantial  
evidence, and  
the confes-  
sions,affording  
full proof  
against them.

Remarks on  
the manner in  
which the  
Comparative  
Statement had  
been prepared.

CRIME CHARGED.—1st count, committing a dacoity in the house of the prosecutor Sedoo Mullick, whereby property in cash Co.'s Rs. 305; in gold and silver ornaments Co.'s Rs. 28; in brass utensils Co.'s Rs. 43-14; in clothes Co.'s Rs. 32-14, and in articles of grocery Co.'s Rs. 80-4, making a total of Co.'s Rs. 490, was plundered; 2nd count, knowingly having possession of portions of the property acquired in the above dacoity.

CRIME ESTABLISHED.—Against prisoners Nos. 1, 2, 4 and 5, dacoity and having knowingly in their possession part of the stolen property; against Nos. 6 and 7, being accomplices in the full proof above.

Committing Officer.—Moulvee Abdool Luteef, Deputy Magistrate of Jehanabad.

Tried before Mr. G. D. Wilkins, Additional Sessions Judge of Hooghly, on the 29th December, 1856.

\* Acquitted.

*Remarks by the Additional Sessions Judge.*—This is a very singular case. The prisoners and the prosecutor all live near one another and the former are charged with having gone forth armed on the night of the 19th September last, while the whole of the country was under water to attack and rob, and with having so attacked and robbed the premises of the prosecutor who was from home at the time, of property to the value of Rupees 490. The arms used were one *lattee* or *club*, and the prisoners were resisted by prosecutor's wife, who says the prisoners attempted to gag her, and failing to do so struck and otherwise ill-used her. While so resisting, the wife bit off the ends of the fingers of the two ringleaders who assailed her, which have been produced and 26 Rupees worth of property was ultimately recovered. The prosecutor has a long-standing feud with not only all his nearest neighbours, but even with all his relatives living far or near, and though there is much in the evidence adduced in support of the case for the prosecution which leaves no doubt of the guilt of most of the prisoners, there is also much of the evidence which is strange, some of it somewhat contradictory, and some also not very probable.

The wife of the prosecutor, who is the only witness to the fact, said in the first instance, she recognized no one either by fea-

Witness No. 1. ture or voice; before the Deputy Magistrate she declared she recognized by their voices three persons, who are not amongst the prisoners; before me she affirms she recognized in the act by their voices *all the prisoners at the bar*. The four witnesses to the identity of the property found, with the prisoners as belonging to the prosecutor, a shop-keeper in good circumstances, are all occasional servants or laborers only, not one being a relative, servant, or dependent, in the habit of visiting or remaining in the house and of all the neighbours who are not charged with or suspected of complicity in the offence, but one seems to have gone and inspected the premises before the arrival of the police.

But, nevertheless, the evidence against all the prisoners but No. 3, is not to be resisted. The prisoners are none of them professional thieves, but their attack on the prosecutor's house was as much for plunder as from enmity, and the evidence on the second count is such as to complete the chain of circumstantial evidence on the first; notice of the affair was conveyed to the thannah the very day after it occurred the 20th September, by both the chowkeedar and the phauree burkundaz. The state of the country was bad for travelling, but the darogah was on the spot on the 21st. On the 22nd, the prisoners' houses and enclosures were searched for the stolen property, the prosecutor's deposition having been recorded the day before. He had returned home the day after the dacoity and the prisoners

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were suspected to have committed the crime from two unusual circumstances. Some of them had just before been to examine the premises, and two after the robbery, the two wounded men had left home suddenly immediately afterwards. The fact of the assault on the prosecutor's wife and of the latter having resisted, being gagged and while so resisting having bitten off the ends of two of her assailant's fingers was communicated at the very first on the 20th September.

The evidence against prisoner No. 1, fixes him with the ring-leadership in the attack with prisoner No. 2, when arrested he made no confession, but his finger was found mutilated, and piece bitten off it was found and has been produced. Before the Deputy Magistrate he admitted he had been at prosecutor's house on the night of the robbery, and said his finger had been bitten by the prosecutor's wife from anger at his refusing her request that he would pass the night with her! Before me he says he was on that night in Calcutta, and that prosecutor's wife (he being at open feud it will be remembered with her husband) had bitten off his finger the day before, because he neglected to bring her some cloth she asked him for. He adds he *had had* an intrigue with the woman. On the darogah searching this prisoner's premises there were discovered no less than twelve articles belonging to and identified as belonging to the prosecutor. Part were found in his house and part in some water within the premises to the south of the house. The prisoner has cited witnesses to prove this property is his, but they do not say so.

Prisoner No. 2, whose little finger is also mutilated ascribes the mutilation to an accident. He made no admissions either to the darogah or to the Deputy Magistrate, but three of the prisoners in their confessions Nos. 4, 5 and 6, declared he was concerned in the affair with them and that he was the joint-leader of the gang with the first prisoner. Some articles belonging to the prosecutor were also found concealed in his house two days after the dacoity. The evidence on this point (witnesses Nos. 9 and 19,) is I think the clearest and most reliable I ever had to record, and it affects all the prisoners with whom property was found claimed by the prosecutor as his. The prisoner has denied the whole charge from first to last, but he has altogether failed to prove by his witness that the property found with him is his own.

Not so prisoner No. 3. The greater portion of the property found, unconcealed in his house, has been clearly proved to be his own, and I think the whole of it is so. The only evidence against him that remains is the demonstration of him by two of the confessing prisoners. Prisoner No. 4, who names all the rest but No. 7, does not name him. He has made no admissions at any period of the enquiry or trial.

Prisoner No. 4, freely admitted both to the police and the Deputy Magistrate he had committed the dacoity with prisoners Nos. 1, 2, 5, 6, 8 and 9, the two first being the heads of the party. All the plunder was conveyed, he said, in the first instance to prisoner No. 1's house. He was aware from the first two prisoners came off maimed from their attempt to gag the prosecutor's wife. Some property was found of prosecutor's in this prisoner's house, which he admitted was amongst the product of the robbery. Before me he denies both the charges brought against him and his recorded confessions.

Prisoner No. 5, denies before me both his previous confessions and the fact of part of the stolen property having been produced by him *hidden in a tree*; but his denial is unsupported by evidence of any kind and is good for nothing against the direct evidence to the contrary.

Prisoner No. 6, is a lad of fourteen or fifteen only and prisoner No. 6's brother. He too confessed to the dacoity both in the mofussil and before the Deputy Magistrate, and like his brother alluded to prisoners Nos. 1 and 2, having had their finger's ends bitten off and to prisoners Nos. 1, 2, 3, 4, 7, 8 and 9, having been concerned with them in the robbery. Of the three articles of plunder produced by this prisoner No. 2 he still admits (notwithstanding that he now pleads *not guilty*) are not his, and all were pointed out by him hidden under water.

Prisoner No. 7, is also a lad of fourteen or fifteen, and he is *nephew to and lives with prisoner No. 2*, several pieces of plundered property were found with him which he produced from a tank. He confessed both to the police and to the Deputy Magistrate to having been an accessary after the fact; but the confessions of his fellow-prisoners Nos. 5 and 6, made him an accomplice. He now denies every thing.

Prisoners Nos. 8 and 9, are little boys, sons of prisoner No. 4. One is probably nine or ten and the other eleven or twelve years of age. They have confessed throughout except before me; but as if they went on the expedition, they clearly did so at the instigation of and under compulsion from their father, I have not recorded their defence. Prisoners Nos. 6 and 7, must also have acted under the guidance of their natural guardians, prisoners Nos. 2 and 5, but they were old enough not only to know they were breaking the law, but also to refuse joining others who had otherwise control over them in doing so.

This trial was first called up on the 23rd December and then postponed for the absence of the prosecutor (witness No. 24½) and his wife the sole witness to the fact. The trial was again postponed for the rectification of the particulars in column 7 of the calendar of commitment. It was finally tried and disposed of on the 27th and 29th December.

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NUREM  
and others.

I acquit and release prisoners Nos. 3, 8 and 9, and convict all the rest both of dacoity and of having knowingly in their possession part of the stolen property. I sentence prisoners Nos. 1, 2, 4 and 5, to seven years' imprisonment with labor and irons and prisoners Nos. 6 and 7, to six months' imprisonment (as accomplices) without labor.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) Prisoner No. 1, urges in his appeal that there is no proof of his complicity; that Seedoo, prisoner No. 4, has made a false statement in his confession; that the appellant was in Calcutta; that his witnesses were not called, and that there is enmity with prosecutor on account of land rents. We observe that the Civil Surgeon deposes that prisoner No. 1, had his finger end bit off; that his defence before the Magistrate and the Sessions Judge is contradictory; that both cannot be true, and neither is substantiated; that property found with this prisoner was identified as prosecutor's, and not as that of this prisoner No. 1, and that this prisoner is clearly named by the confessing prisoners as implicated in the crime charged.

Prisoner No. 4, urges that no property was found with him; that he was forced to confess, and that certain articles (Nos. 6, 8 and 10, apparently) were his own. His confessions to the Police and Deputy Magistrate state the incidents of the dacoity in the same manner as they are stated by the other confessing prisoners; those confessions are proved to have been voluntary, and are supported by independent evidence; and the articles Nos. 6, 7, 8, 9 and 10 are proved to be prosecutor's, and to have been found, Nos. 6, 7, 8 and 9 with this prisoner, and others, i. e. with (prisoners Nos. 8 and 9,) and Article No. 10 with himself.

Prisoners Nos. 2 and 5, urge that the case was got up by the darogah; that the prosecutor called it a theft, and not a dacoity; and that the property found with them is their own.

We observe that the Civil Surgeon's evidence is clear as to prisoner No. 2, having his finger bit, and the statements of the confessing prisoners as to the dacoity correspond with the facts independently in evidence. The facts shewn by these confessions bear against both these prisoners. The evidence shews that there were two of the party armed with *lattees*; and the entry into the house, and the mode of plunder was essentially after the fashion of a dacoity; in short the facts proved shew that the crime comes within the legal definition of dacoity in Clause 1, Section 3, Regulation LIII. of 1803. The property found with this prisoner has been fully proved to be prosecutor's.

Prisoner No. 5, confessed to the Police and Magistrate, and prosecutor's property was found, hidden, in his possession.

We see no reason to doubt his confession, or his guilt as independently proved.

We observe that the Comparative Statement enters articles Nos. 11, 12 and 13, as found with prisoner No. 4. By what witnesses this is proved is left blank in the proper column, nor do we find that it is proved at all. Further, the entry in column 11, which should refer to No. of *witnesses*, refer<sup>o</sup> obviously to Nos. of *articles of property*. The Additional Sessions Judge should have detected and caused the correction of such errors, and the Deputy Magistrate should not have committed them.

1857.

June 12.

Case of  
SHEIKH  
NUHEM  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND DUNNAEE SAHOO PROSECUTORS

*versus*

BHUGGEE MULLICK (No. 6.) AND DUSRUTH  
MULLICK (No. 7.)

Cuttack.

1857.

June 12.

Case of  
BHUGGEE  
MULLICK  
and another.

CRIME CHARGED.—Prisoner No. 6, 1st count, with burglary by having effected an entrance at the prosecutor's house and theft therefrom of property valued at Rs 3-4-6; 2nd count, with severely wounding the prosecutor with a hatchet.

Prisoner No. 7, with being an accomplice in the said burglary and wounding on the 6th January, 1857.

CRIME ESTABLISHED.—Same as the crime charged.

Committing Officer.—Mr. R. N. Shore, Magistrate of Cuttack.

Tried before Mr. J. Ward, Sessions Judge of Cuttack, on the 4th March, 1857.

*Remarks by the Sessions Judge.*—The particulars of this case are as follows.

Dhunnaee Sahoo was touched in the night by a person whom he seized when outside the house and by the light of the moon, recognized as defendant No. 7; meanwhile defendant No. 6, (also recognized by the prosecutor) severely wounded Dhunnaee Sahoo plaintiff in the thumb and in two other places.

With the assistance of the neighbours Dusruth was secured and confessed at the thannah and before the Magistrate, and partially before this Court implicating defendant No. 6.

The case was postponed from the 7th February, on account of the absence of the witnesses to the confession also for the purpose of taking the deposition of the Assistant Surgeon, and in order to alter the Persian and Ooriah calendars in which

Appeal rejected. Remarks on Police proceedings and the proper record of them.

1857.

June 12.

Case of  
BHUGGEE  
MULLICK  
and another.

were mistakes; defendant No. 7, was seized with part of the plaintiff's property at the time of the occurrence and has confessed.

Against No. 6, defendant, it is proved that he left part of the stolen property with witness No. 7, who lives in his village and who surrendered it to the police. The plaintiff also recognized him by the light of the moon, the defendant No. 7, in his confession has stated that defendant No. 6, tempted him to join in the crime.

Defendant No. 6, is a chowkeedar. The evidence of the Civil Surgeon proves that the injury to the prosecutor's thumb will be permanent. The law officer finds both prisoners guilty of the charges. The latch inside the house was opened by thrusting the arm in over the door and drawing aside a bar and this amounts to burglary.

I consider that there was no intention to kill but the injury from the wound is likely to be permanent, the weapon was a sharp hatchet, the prisoner No. 6, was a chowkeedar, I therefore sentence him to fourteen years' imprisonment with labor in irons and two more in place of stripes, in all sixteen years and I sentence defendant No. 7, to eight years' imprisonment with labor in irons as an accomplice.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court having perused the record, consider the charges fully proved against the prisoners. Dusruth Mullick was seized at the time and confessed. He implicated the other prisoner Bhuggee Mullick, who was also recognized by the prosecutor when he was wounded by the said Bhuggee. We reject the appeal.

The Court wish to draw the Magistrate's attention to the police proceedings in this case. It appears that the robbery took place on the night of the 6th, and a complaint (verbal it is presumed) was lodged with the Moonshee. A report of the 8th January from the Darogah shows that the Moonshee had commenced the investigation, had apprehended Dusruth Mullick, who had confessed, and Bhuggee Mullick, and was proceeding with the case when the Darogah arrived. On the 9th is a further report from the Darogah, together with the first written information also of the 9th given by Sukkim, father of the prosecutor, and the confession of Dusruth Mullick taken on the 9th, and the defence of Bhuggee Mullick of the same date. From the 7th to the 9th consequently, the police were acting on no written information, nor does it appear from the police record when the charge was made.

Further, it is not satisfactorily explained how part of the property was discovered to be in the possession of Soonaye Kahalia. In reply to a question put by the Magistrate this witness states that Goorobaree and Naloo knew that Bhuggee had given it to

him, and told the mohurri; but we find no trace of their having given this information, in their evidence, nor in the police proceedings. They prove indeed that the prisoner Bhuggee did give the articles to Soonaye; but the information on which the Moon-shee acted was not derived from them. In his statement to the Darogah given on the 9th, Sukkim deposes that Bhuggee Mullick said that Gooroobaree had taken the cloth and rupees, and given them to Soonaye; but as this statement was made subsequent to the production of the articles, and no report of his proceedings has been submitted by the mohurri, it remains uncertain how he obtained the clue. This important point of a trial should always be ascertainable from the record.

1857.

June 12.

Case of  
BHUGGEE  
MULLICK  
and another.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND TUFFEEK MUNDUL

*versus*

MOHUBULLA (No. 15,) BOXA MUNDUL (No. 16,) JALOO MUNDUL (No. 17,) NOTEEB MUNDUL (No. 18,) KISMUTH SHAHA (No. 19,) GOBURDHUN ALIAS GOBRA PAIK (No. 20, APPELLANT,) AND MOKEE CHOWKEEDAR (No. 21.)

Dinapore.

CRIME CHARGED.—1st count, affray attended with wilful murder of Hinggoo Mundul; 2nd count, accessories to the above both before and after the fact.

1857.

June 13.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Hinggoo Mundul.

Case of  
GOBURDHUN  
alias GOBRA  
PAIK  
and others.

Committing Officer.—Mr. T. E. Ravenshaw, Magistrate of Dinapore.

Tried before Mr. J. Grant, Sessions Judge of Dinapore, on the 6th December, 1856.

*Remarks by the Sessions Judge.*—The origin of the affray was a dispute between the inhabitants of two villages, Noorpore and Haroopore, in different zemindaries about a tank, which belonged to the former, but the water of which was used by the inhabitants of both villages. On the morning of the 24th April, the Noorpore villagers commenced fishing in the tank, which the Haroopore men objected to on the ground that it dirtied their drinking-water, and their objection not being attended to, assembled a number of men from the neighbouring villages in their zemindary, when the Noorpore men retreated.

Prisoners' appeal rejected, his pleas being invalid. Remarks on examination of witnesses for defence.

1857.

June 13.

Case of  
GOBURDHUN  
alias GOBBA  
PAIK  
and others.

They then commenced cutting bamboos in the Noorpore boundary, when the owner, "Hinggoo Mundul," who remonstrated, was knocked down and shortly afterwards died. It is clear from the evidence, that the deceased was first struck by the prisoner Boxa, No. 16, and subsequently by Mohobulla, No. 15, and that other Noorpore men were injured by their assistants, Goburdhun No. 20, and Mokee No. 21, and that Jaloo No. 17, Notub No. 18, and Kismuth No. 19, were present and joined in the attack. All the prisoners pleaded *not guilty* before me, but Mohobulla No. 15, and Boxa No. 16, confessed most clearly before the Magistrate and the evidence for the defence is a failure. The *futwa* of the law officer convicted the prisoners of affray attended with culpable homicide, in which I concurred.

*Sentence passed by the lower Court.*—To be imprisoned with labor only Nos. 15, 16, 20 and 21 each for seven years and Nos. 17, 18 and 19, each for five years.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The appellant, one of seven persons convicted by the Sessions Judge, offers no special pleas in appeal. On reference to the record we find that the appellant was identified by six eye-witnesses, one of whom received a blow from him. Prisoner's name is also mentioned in the confessions of Buxoo and Mohobulla as being actively engaged in collecting men to commit the riot. In his defence he pleads an *alibi*, but no witnesses have appeared to substantiate this plea, nor does the prisoner in his appeal urge the want of their evidence as a plea for the reversal of the sentence passed upon him. We reject the appeal.

The Court draw the Sessions Judge's attention to Section 4, Regulation IX. 1796, and to the Nizamut Adawlut Reports, volume 5, page 94. The Court also observe, from several cases which have been before them committed to the Sessions, that the Magistrate too frequently commits the parties, without taking evidence for the defence. The law, Clause 1, Section 2, Regulation VIII. 1830, while leaving it discretionary with a Magistrate to call for evidence on the part of the accused, is not intended to be a dead letter.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

RUGGHOO MUNDUL.

Midnapore.

1857.

June 15.

Case of  
RUGGHOO  
MUNDUL.

**CRIME CHARGED.**—1st count, dacoity in the house of Toolseeram Bhoonya, inhabitant of Sulcempore, thannah Nugwa; 2nd count, dacoity in the house of Chand Koor Kusbee, inhabitant of Taltullah, thannah Nimal; 3rd count, with being by profession a dacoit and having belonged to a gang of dacoits.

**Committing Officer.**—Capt. C. H. Keighly, Assistant General Superintendent, Assistant Dacoity Commissioner and Joint-Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 27th April, 1857.

*Remarks by the Sessions Judge.*—The prisoner pleads “guilty” to all the charges brought against him.

The evidence in support of these charges, consists of the prisoner’s own confession and the evidence of one witness Madhub Doss.

The confession is duly attested; and proved by witnesses Nos. 2 and 3 to have been voluntarily made.

In support of the truthfulness of the confession and for corroboration of the evidence of the witness, the records noted in the margin\* have been laid before the Court. From the record No 151, it appears that a

\* No. 151, dacoity in the house of Toolseeram.

No. 411, dacoity in the house of Chand Koor Kusbee.

gang of dacoits attacked the house of Toolseeram Booeeah in Sulcempore on the night of the 29th January, 1840, and plundered therefrom property valued at rupees 437. It appears from a copy of the Darogah’s report (the original is not with the records) dated 30th January, that the chowkeedar and Athgeria stated that Nundoram Maitee prosecutor’s servant had recognized among the dacoits Kanteram, the prisoner’s brother Modoo Geree and Damoo Mal.

One Shaam Mohun recognized the two last mentioned, and another servant Doorga Churn deposed that he could swear to Kanteram, Damoo Mal, and Nukoor Maitee, this was on the 1st February. On the 3rd February, the darogah reported that Suleem Burkundaz brought before him one Pahul Geeree, whom Narain Maitee chowkeedar had arrested on the 21st Magh at the shop of one Ramdoor Nundee of Gunj Balcegaice, as he

Prisoners convicted on their own confession; corroborated by other evidence. Remarks on testimony of approvers, who have been heretofore found untrustworthy.

1857.

June 15.

Case of  
BUGGHOO  
MUNDUL.

could not give a satisfactory account of himself. The said Pahul Gereer appears to have confessed to this dacoity on the burkundaze's promising to release him if he told the truth, so that this confession is not worth much. In it he names Rugghoo Mundul the prisoner amongst others as his accomplice.

Rugghoo, son of Gungaram was arrested, denied the charge and was discharged by the police, but his brother Kanto or Kanteram and seven others were convicted of this dacoity by the Sessions Judge in May, 1840.

The record No. 411, of the second dacoity charged shews that it was committed on night of 6th August, 1850, in the house of Chand Koomar Kusbee and that property to the amount of rupees 146, was plundered. The prosecutrix swore to her recognition of Horia Haree and five others, but they were discharged, the Magistrate believing them to have been accused from enmity. None of them are stated by witness No. 1, to have accompanied the gang to which he alludes, neither did the name of the prisoner or witness transpire at the time, nor does the record shew any dacoits to have been punished as mentioned by the committing officer in his abstract of examination and grounds of commitment.

The prisoner, was arrested on the confession of Madhub Doss approver witness No. 1, on the 5th September, 1856, and not on the 20th March, 1857, as erroneously stated in the calendar which has been amended. It appears that he was committed to take his trial on the 5th March last, on a charge of one distinct and specific dacoity and was sentenced to nine years' imprisonment by the additional Sessions Judge, on the 16th of that month.

It now appears, that he volunteered this confession when that sentence was being explained to him. The trial was postponed pending an enquiry on these points and a reply has been this day received.

The confession of the prisoner, has been duly proved and is corroborated by witness No. 1, and the record of the dacoity in Toolseeram Bhooseah's house. He has also pleaded guilty in this Court, to all the charges brought against him. I accordingly convict him of the same and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) There is no reason to doubt the truth of the prisoner's confessions. In the dacoity charged in the 2nd count, the record and the prosecutrix's statement confirm the confession, especially as to the details of the binding of prosecutrix, and the taking her ornaments from her. We convict the prisoner on his confession, and sentence him to transportation for life under Act XXIV. of 1843. The witness approver, Madhub Doss, testifies to prisoner being engaged in

this dacoity ; and prisoner in his confession mentions Madhub Doss. If this be *the* Madhub Doss approver referred to in the Nizamut Adawlut Reports, as untrustworthy, the officers of the dacoity department should be very careful as to using even his evidence at all.

In fact the Court desire that the Commissioner and his subordinates will consider it *a rule imposed by this Court* that

\* Khetter Koura and others.  
Nizamut Adawlut Report.

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whenever the approvers whose names are referred to in cases, noted in the margin,\* as untrustworthy, or others who have been declared to be so in other cases by the Nizamut Adawlut are entered in the Calendar as

witnesses, the fact may be *distinctly stated therein*.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

KENOO MOOCHE.

Moorshe-  
dabad.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Baboo Obhoychurn Bose, Deputy Magistrate under the Commissioner for the suppression of dacoity at Moorshedabad.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 27th April, 1857.

*Remarks by the Sessions Judge.*—A prisoner named Gopal Doss Byragee was convicted by this Court on the 28th March, 1857, of having belonged to a gang of dacoits, he in his confession before the Deputy Magistrate on the 10th January, implicated this prisoner ; a warrant for his apprehension was that day issued, and the darogah apprehended and sent him on the 15th idem ; the next morning he denied having committed any dacoity with Gopal Doss, but confessed to having committed five other dacoities, to having illegally assembled with intent to commit dacoity, and to having belonged to a gang of dacoits ; on the 20th idem, he gave a detailed account of the several dacoities. The records of the two have been submitted, and witnesses Nos. 1 and 2, clearly prove that on the night of the 29th October, 1843, a dacoity occurred in the house of Sham Mojoomdar of Amerpoor, in which property valued at

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Case of  
BUGGHOO  
MUNDUL.

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June 15.

Case of  
KENOO  
MOOCHE.

Prisoner convicted on his own confession. Remarks on certificates ; and as to measures taken to prevent collusion.



1857. 114 Rs. 13 As. was stolen, this is case No. 3, of the confession.

June 15.

Case of  
KENOO  
MOOCHHE.

That dacoity being thus proved, and the prisoner having confessed to it and to having belonged to a gang of dacoits, and pleading "guilty" before me, and annexure B. shewing that he was sentenced to imprisonment for having assembled with others with intent to commit dacoity, I convict him of the crime charged, and recommend that he be sentenced to imprisonment for life in transportation. This case was tried under Act XXIV. of 1843.

The record No. 6, does not agree with the confession of the prisoner, and there has evidently been a mistake regarding the case, the prisoner says that on his return from the Amerpoor dacoity (above detailed) with Motee Moochee, another dacoity was determined upon, and a few days afterwards they went to Kootabpoor in zillah Nuddea, and committed a dacoity in the house of a Koomar and robbed him of his property; now the Amerpoor dacoity took place on the night of the 29th October, 1843, and the record of the Kootabpoor dacoity sent with the case shews that it occurred on the night of the 6th January, 1851. So that it cannot be

\* Nobo Pal the witness No. 5, says that a few years previous to this dacoity, one occurred in the house of Hori Pal Koomar of his village, and I think it likely that that is the case alluded to by the prisoner.

the case referred to by the prisoner.\* The Deputy Magistrate has been requested to be more minute in his enquiries regarding the records of cases confessed to, and also to record in future the reasons why so many

days elapse between the general and detailed confessions of a prisoner, as when a prisoner's detailed confession is not taken for so many days after the general one, and the prisoner is allowed to mix with others in a small guard house such as that under the charge of Deputy Magistrate, it is impossible to place as much credence in the details he subsequently mentions, as might otherwise be placed.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner confesses to five dacoities. The records of two are submitted, of which, however, the records of one cannot be considered corroborative. In the other, the Amerpoor one in the house of Sham Mojoomdar, the prosecutor's statement (4th Dec. 1843,) does corroborate the prisoner's confession.

We convict the prisoner on his own confession, and sentence him to be imprisoned for life in transportation beyond seas.

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\* \* It has since been reported by the Commissioner that there were two Kootabpoor Dacoitees.

The Court observe that the main portion of the grounds of commitment is merely an abstract of the record-keeper's return.

Copy of the fourth para. of the Sessions Judge's letter should be communicated direct to the Commissioner for the suppression of dacoity in order that he may take such steps as he may deem necessary with reference to the remarks in it. \* \* The Court would further observe, (which they have done frequently before,) that in every case a certificate should be appended to the Calendar, not only certifying that to the best of the belief, of the Committing Officer, collusion either personally as between confessing prisoners and approvers, or through the medium of others, or by an access to records, has been guarded against, but with a concise statement of the reasons of such belief, i. e. as to the precautions taken to prevent it, or other material circumstances affecting this point.

Copy to Commissioner of Dacoity for communication to, and observance by, all his subordinates.

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Case of  
KENOO  
MOOCHIE.

PRESENT :

J. S. TORRENS, Esq. Judge.  
G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND ANOTHER

*versus*

PHELARAM SHOO.

W. Burdwan.

CRIME CHARGED.—Wilful murder of his wife Shursutte Tantcnee, by inflicting upon her two blows with an axe on the night of 25th March, 1857 or 13th Chytro 1263.

1857.

June 16.

Committing Officer.—Moulvee Gholam Ushruff, Deputy Magistrate of Boodbood.

Case of  
PHELARAM  
SHOO.

Tried before Mr. P. Taylor, Sessions Judge of West Burdwan, on the 23rd April, 1857.

*Remarks by the Sessions Judge.*—The confession made by the prisoner, in the *mofussil*, was substantially to the following effect. "My mother connived at an intrigue between the deceased and my brother, Bhyrob Shoo. Early in the morning of the 21st Phalagoon last, I saw Bhyrob and the deceased together in the place where rice is cleaned, and heard him say to her, 'What! do you sleep so sound that you cannot be awakened?' I made no observation at the time, but afterwards, watched the pair. On a subsequent night, in the same month, when I was pretending to be asleep, Bhyrob came and again took my wife into the abovementioned place; whereupon I got up, and, seeing them together, awakened my father, mother, and sister, and taking them to the spot, shewed them what

Prisoner con-  
victed; and  
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majority of  
the Court con-  
sidering there  
were no ex-  
tenuating cir-  
cumstances.

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PHELABAM  
SHOO.

was going on. On seeing us, Bhyrob arose and wished to beat me, my father prevented him from doing so, and my mother would not let my wife remain with me, but took her to her own chamber, I did not go to sleep, and some time after, saw my mother send my wife back to Bhyrob. In consequence of what had taken place, I subsequently sent my wife to Kistobazar (to her own family,) when Bhyrob visited her there, and, eventually, brought her back to my house. On the night of the 13th Chitro (the night of the murder,) I wished to have connexion with my wife, as we were alone together. She refused to permit me, and, turning away, began to abuse me. I being very angry, said, 'You have done the deed with Bhyrob,' when she exclaimed, 'I have done right in so doing,' and made use of an indecent expression. Upon this I became much enraged, and, seizing my *koolaree*, gave her two cuts with it, on the back of her neck and one on the side thereof, and despatched her. I killed her with my own hand. I was never in custody for any offence before. I confess willingly."

The prisoner's confession, before the Deputy Magistrate was to the same effect, but he added, that the axe happened to be at hand, when the altercation between the deceased and himself took place, and that he killed her *after she had gone to sleep*. Spontaneous utterance of both these confessions, by the prisoner, was fully established by the witnesses, named under the proper head in the calendar, and the evidence of the chowkeedar, Thakoor Doss, witness No. 1, who apprehended him, in blood-stained habiliments, outside his house, shortly after the murder had taken place, with that of the prisoner's father and mother, Ramkanth Shoo and Doorga Tanteenee, witnesses Nos. 13 and 14, and part of that of his brother Bhyrob, witness No. 16, sufficiently proved that the contents thereof, with the exception of the allegation that the axe had accidentally been at hand when he slew his wife with it, must be true. The father, mother, and brother of the prisoner, all gave the intrigue with the latter, as the cause of his crime, in their *mofussil* depositions, but denied that they knew any thing about it, before the Deputy Magistrate and Sessions Court. Their denial was, however, made in such a manner, as to shew that their *mofussil* statements must have been true. The prisoner's mother also declared, before the Deputy Magistrate and this Court, that the prisoner had taken a lighted *cheragh*, with a cover over it, towards his hut, on the night of the murder, on pretence of wishing to collect lamp black for some medicinal purpose, though she did not actually see him take it into his said hut; that she had heard a noise of something falling, and the deceased call out *mah go* (oh mother,) and *kee koree go* (what are you doing?) at about half past ten o'clock, that when she

shouted to prisoner and asked him what had happened, he said that his wife had fallen off her bed, and was being replaced by him, and that deponent heard him tell her to resume her couch.

Both father and mother as well as Bhyrob affirmed, all through, that the prisoner, who was in the habit of cutting wood in a certain jungle, with the *koolaree* laid before the Court, had had it sharpened on the day preceding the night of the murder and their allegation was confirmed by Mudhoo Kamar, witness No. 21, who had sharpened the said axe. Bhyrob further declared, in the *mofussil* only, that he heard the prisoner striking the deceased and arose to see what was the matter when the prisoner came out of his hut and after attempting in vain to strike him also, fled, but was shortly brought back by the chowkeedar. On being questioned by the Sessions Court, as to whether he had seen any extinguished lamp in the prisoner's room, when he first went into it with the chowkeedar, and whether there was oil in it, he answered both questions in the affirmative. The father and mother declared that they were in too confused a state, to observe whether there was any such lamp or not.

The native doctor Hceralal Bose, witness No. 8, deposed to the deceased having been all but decapitated, by two severe blows of some cutting instrument, similar to the axe before the Court. The weapon in question weighs one seer and four chittacks with its handle and has, evidently, been newly sharpened. It is also covered with dried blood, and proof has been adduced that it was found in the room, where the deceased was put to death.

The prisoner who pleaded guilty, afterwards virtually, withdrew his plea, when called upon for his defence, by affirming that he had found his wife dead, when he awoke at night, a short time after the altercation he had had with her, that Bhyrob must have slain her, and that his confession was obtained by violence, inflicted by the police burkundazes. He at the same time declared that he could name no witnesses, in support of what he had alleged.

The *futwa* of the law officer convicts the prisoner on full legal proof, and declares him liable to *kissas*, and I concur in the finding.

The repeated confessions of the prisoner, his plea of guilty, the utter improbability of his defence, and the strength of the circumstantial evidence against him, leave no doubt of his having slain his wife, with the *koolaree* before the Court. On the other hand, the deposition of the native doctor proves, that he must have struck her repeated blows on the neck therewith, his foudjary confession acknowledged, that he killed her *after she had gone to sleep*, and subsequently to an altercation between

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Case of  
PHELARAM  
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PHELARAM  
SHOO.

them, and, as the evidence of prisoner's father shews, that every opening of the room, in which the deed was done, was closed up with *tattees*, there was no moon on the night of the 13th Choitro, and the above repeated blows could not have been struck, without light whereby to see the neck of the deceased, there is every reason to believe that the prisoner, as stated by his mother, must have taken a lamp into his hut, with a view to that end. When, to all these considerations is added the sharpening of the axe on the day preceding the night on which it was so *felly* used, the conviction of malice prepense, on the part of the prisoner, becomes too strong to be set aside.

It is true that the misconduct of the deceased had placed the prisoner in a most humiliating and painful position, the more difficult to bear, because her paramour was his own brother, and that almost daily offences against his honor had, very probably, worked him up into a state of mingled hatred, disappointment, and fury, difficult for any person, not placed in the same predicament, to imagine, but, as neither law nor conscience can look upon such a condition of mind as palliative of premeditated murder, and uxoricide is but too common an offence in this district, I am constrained to recommend that the prisoner Phelaram Shoo be hanged.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. J. S. Torrens, Judge, and Messrs. G. Loch and H. V. Bayley, Officiating Judges.)

*Mr. G. Loch.*—I have perused the record and observe that the immediate cause of this murder was the refusal of the deceased to allow the prisoner, her husband, to have connection with her. This refusal, coupled with her adulterous connection with his brother, a circumstance well known to the prisoner and the neighbours, appears to have worked upon his mind, and led him deliberately to kill his wife, *when she was asleep*, with an axe, which was at hand in the house, after an altercation between them. Had the prisoner in the heat of words struck the deceased, or had he used an instrument showing an intent rather to punish than to kill his wife, some ground for mitigation of the sentence proposed by the Sessions Judge would have existed. But without going so far as the Sessions Judge in supposing that the prisoner had his axe sharpened the day previous for the purpose of killing the deceased, or that he took a light into the room to enable him to see clearly how to commit the murder, I think that there is, according to the prisoner's confession before the Deputy Magistrate, and with reference to the instrument used, sufficient proof of a deliberate intent to commit murder. I would sentence him to be hung.

*Mr. H. V. Bayley.*—I cannot concur in this sentence. The law gives the Nizamut Adawlut the power to pass a mitigated

sentence in cases of wilful murder, where there may be extenuating circumstances. And the practice of the Court has been not to pass a capital sentence where such circumstances exist. In this case we have *only the prisoner's confession* as to the immediate circumstances attending the murder; and the facts otherwise patent on the record render his statement highly probable. He states that on the night in question he wished to have connection with his wife; she refused, and he said to her, "You have no objections when it is Bhyrob," (prisoner's own younger brother): She retorted that "I should do right." There is nothing to show what interval, passed between these words, and the fatal blows, but she was found dead next morning. There is no sufficient proof that the axe was sharpened with reference to premeditated murder; or that the lamp was lighted and placed so as to enable prisoner effectually to commit that murder. Again, it is quite clear that the prisoner had mentioned his ideas of his wife's infidelity with his own younger brother to his father and mother; and that he was constantly under the feeling that he was being dishonored by him; and had, with his father and mother's knowledge of the reason, sent his wife to her father's, after an alleged discovery of adultery between her and his brother on one occasion in Phalagoon. The adulterous intercourse is spoken of by the witnesses as generally known, and as an existing cause of provocation.

I think these facts shew on the one hand that prisoner had *much provocation*, while on the other *malignant premeditation* is not in evidence.

I would sentence to imprisonment for life in transportation.

*Mr. J. S. Torrens.*—This case is sent to me for a third voice owing to difference of opinion between the two Judges first presiding. Having carefully perused the confessions of the prisoner recorded in this case and the evidence of the witnesses as to the cause and circumstances of his previous disagreement with the deceased, I am of opinion that the crime of wilful murder is most clearly established against him. The statements made in the prisoner's own confessions before the police and Magistrate in themselves show that when he inflicted the two fatal blows of the *kooralee* on the deceased, he did so with the fixed determination of depriving her of life. Even under the Mahomedan Code, the immediate provocation, which the prisoner assigns for the deed, would not protect him from the extreme penalty of the law according to what is established on his own confessions; but besides, I agree with the Sessions Judge in considering that there is strong circumstantial evidence to show that the murder was one of premeditation, and that it was determined on by the prisoner in the event of the deceased, after he had got her into his power, persevering in her refusal of connubial rights.

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I do not think that any sentence should go forth which would leave it to be supposed that the Courts considered refusal of the kind to be any extenuation in a case of wilful murder, such as the present. On the above consideration, I agree in the opinion of Mr Loch, and hold that the prisoner must be sentenced capitally.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## MUSST. SOOME SONTALIN

Chota Nag-  
pore.*versus*

SALOEE.

1857.

June 16.

Case of  
SALOEE.

CRIME CHARGED.—Wilful murder of Seedoo Sontal.

Committing Officer.—Capt. E. Sismore, Senior Assistant Commissioner of Singbhoom.

Tried before Capt. W. H. Oakes, Deputy Commissioner of Chota-Nagpore, on the 14th February, 1857.

The extreme  
penalty of  
death remit-  
ted under the  
presumed ab-  
sence of preme-  
ditation, and  
the peculiar  
circumstances  
of the case.

*Remarks by the Deputy Commissioner.*—Witness No. 1, Musst.

Soorta, who is the mistress of the prisoner, states that on the 12th January, 1857, about noon, she was in the village of Koochia sole at the house of her brother Seedoo Sontal, deceased, when the prisoner came and caught her by her hair and directed her to come to his house, which was a short distance off in the same village. The deceased requested prisoner not to pull the woman's hair and promised that she should presently go to the prisoner's house. A scuffle having taken place between the deceased and the prisoner, the latter proceeded to his house and the former went into his compound to obey a call of nature. Immediately subsequent to this, the prisoner was perceived close

to the deceased and was seen\* to strike him twice on the neck with an axe, causing his instantaneous death.

The prisoner ran away to his dwelling, but an outcry being raised by Dareema, witness No.

- \* No. 1, Soorta Sontal,
- „ 2, Dareema Sontal,
- „ 3, Doogna Sontal,
- „ 4, Ghoonia Sontal.

2, and the villagers having collected, he was arrested immediately, and a bloody axe, which is proved† to belong to the prisoner, was found‡ in his house.

- † No. 1, Soorta Sontal,
- „ 2, Dareema Sontal,
- „ 3, Doogna Sontal.

The prisoner confessed both

- ‡ No. 2, Dareema Sontal,
- „ 4, Ghoonia Sontal.

- \* No. 9, Nundoo Mundle,
- „ 10, Kinoo Pattur,
- „ 11, Gopee Santee,
- „ 12, Mohun Paik,
- „ 13, Maniklal Burkundaz,
- „ 14, Peerbux ditto.

in the mofussil\* and before the Senior Assistant,† but pleads not guilty in this.

The Jury\* find a verdict of guilty. In this finding I fully agree.

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SOLOEE.

- † No. 6, Gopee Sontal.
- „ 9, Lya Sontal.

There can be no doubt that the deceased was killed by the prisoner. There are four eye-witnesses‡ to the fact, the prisoner was also arrested immediately and his bloody axe was found in his house. It is established fur-

- ‡ No. 1, Soorta Sontal.
- „ 2, Darcena Sontal.
- „ 3, Doogna Sontal.
- „ 4, Ghoonia Sontal.

ther that he voluntarily confessed both in the mofussil and before the Senior Assistant. That the wounds inflicted on the

- § No. 6, Gopee Sontal.
- „ 9, Lya Sontal.

deceased were of a deadly nature, is manifest from the testimony of the attesting witnesses§

to the *sooruthal*.

Before the police the prisoner has stated that he had been drinking, and that he did not know what quarrel had occurred, but that he had caused the death of the deceased, by wounding him three times with an axe. In the Court of the Senior Assistant he has confessed that he killed Seedoo by wounding him three times with an axe, but he asserts that he was out of his senses from intoxication, and that Seedoo had given him three blows with a *lathee*. Of this alleged assault by the deceased, the prisoner has not brought forward a particle of proof. That the prisoner had been drinking is very probable, as the day in which the crime was perpetrated was the *makar sukrant* of the month of Poos, at which festival the Sontals indulge in intoxicating liquors, but that he was out of his senses owing to intoxication, I do not think is at all established. It will be observed that Mussamut Soorta is the only witness who asserts that a scuffle took place and that the prisoner was insensible from drunkenness, but considering the relation in which she stands to the accused, I attach more weight to the testimony of the other witnesses for the prosecution, who depose that the prisoner was not drunk and the truth of their statement is supported by the fact that the prisoner immediately after he had killed the deceased was able to run away as well as a sober man.

No enmity appears to have existed between the parties, and the only cause apparent for the murder is, that the prisoner

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\* Ramkannie Roy, Mookhtar.  
Lalla Gujraj Singh, ditto.



1857. was enraged because the deceased would not allow Mussamut Soorta to go to the prisoner's house.

June 16. Considering that the deceased had done nothing in any way to provoke the deadly assault which was made on him and that the prisoner must have gone at least 25 or 30 yards to fetch his axe, I can look on the crime of the prisoner as nothing less than wilful murder and beg to recommend that a capital sentence may be passed on him.

Case of  
SOLOEE.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The only witness to the cause of this crime is Musst. Soorta, witness No. 1, the sister of the deceased, and the mistress of the prisoner. She says that the prisoner came to her brother's house, and told her to go home. Her brother said he would take her home after he had dined. The prisoner then went home, a distance of about forty or fifty cubits, and got a *tanghee*, with which he cut down the deceased, who was easing himself. On being questioned, this witness says there was a *tanatani* (scuffle) between the deceased and the prisoner, before the latter left for his house, but no angry words seem to have passed between them. It is admitted that both deceased and the prisoner had been drinking, but the latter was not in such a state of intoxication as to be unconscious of what he was doing, or unable to run away, and though there was no previous ill-will, nor any pre-meditation to take life before the scuffle occurred, yet the intent on the part of the prisoner to kill is to be presumed from the nature of the instrument used, and the repetition of the blows (3) which he struck. The prisoner appears to have been excited by drink on a day when all the tribe drink especially, and angered at the non-immediate compliance with his order, as also by the scuffle which ensued; and, while still labouring under the irritation caused by these circumstances, he committed the murder. Taking into consideration the peculiar habits of this class of people, and bearing in mind the practice of the Court, which is to remit the extreme penalty of the law in the absence of previous malignant design or pre-meditation, we sentence the prisoner to be imprisoned in transportation, with labor and irons, for life.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND KISTO MOCHEE

*versus*

SONATUN DOME (No. 8,) ROOPCHAND DOME (No. 9,) GOPAL DOME\* (No. 10,) SHADOO DOME (No. 11,) AND HIRA DOME (No. 12.)

East  
Burdwan.

1857.

June 17.

Case of  
SONATUN  
DOME  
and others.

CRIME CHARGED.—1st count, dacoity with wounding and plunder of property of the value of Rupees 32-3-9. Sonatun Dome, prisoner No. 8, and Roopchand Dome, prisoner No. 9, being employed at the time as police chowkeedars and Hira Dome, prisoner No. 12, as Simandar; 2nd count, Shadoo Dome, prisoner No. 11, having in his possession property acquired by the above dacoity well knowing it to have been so acquired.

CRIME ESTABLISHED.—No. 9, dacoity and wounding the prosecutor, Kisto Mochee, Nos. 8, 11 and 12, dacoity and No. 11, of having a portion of plundered property in his possession.

Committing Officer.—Mr. H. B. Lawford, Officiating Magistrate of East Burdwan.

Tried before Mr. T. C. Loch, Additional Sessions Judge of East Burdwan, on the 14th February, 1857.

*Remarks by the additional Sessions Judge.*—This dacoity took place on the 31st of October last,

The prosecutor was aroused from sleep by several men forcing their way into his house; on their entering he recognised prisoners Nos. 8, 9, 10, 11 and 12, the three first being residents of his village, he immediately seized prisoner No. 8, when No. 9, brother of No. 8, got hold of a sacrificing knife and slightly wounded the prosecutor on the head, from which, he says he became insensible. The dacoits, having plundered property to the value of Rupees 32-3-9, decamped. While the dacoity was going on, the neighbours gathered round, but were afraid to attack the dacoits, as they were armed. Witnesses Nos. 1, 2, 3, 4 and 5, recognized prisoners Nos. 8 and 9, and witnesses Nos. 1, 2, 3 and 4, prisoners Nos. 11 and 12.

The noise occasioned by the dacoity was heard by the mohurrir of chowkey Khondo Ghose, which is only about quarter of a mile from the prosecutor's house, he immediately sent a burkundaz to see what was the matter, he himself following shortly after. On the road he met the burkundaz returning, who

One prisoner acquitted. Two convicted. Remarks on the necessity of Sessions Judge noticing material contradictions in evidence.

\* Acquitted by the lower Court.

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told him what had happened. He immediately proceeded to the prosecutor's house and learnt from him the names of the parties he had recognised, as also by whom he had been wounded. Without losing any time he went in search of prisoners Nos. 8 and 9, who live together, as their house was the nearest, but he could find neither, he then went in search of prisoners Nos. 11 and 12, who also live together in a village about a mile distant, on coming to their house he saw the prisoners trying to run away, No. 12, succeeded in getting off, but he seized No. 11, who threw down a bundle, which was secured, and, when opened, was found to contain a portion of the plundered property.

The prisoners pleaded "*not guilty*;" Nos. 8, 9 and 11, attribute their being charged with the offence to the enmity there exists between them and the prosecutor, but their witnesses do not support their statement. Prisoner No. 12, pleads an *alibi*, which is not worthy of credence.

Although the mere evidence of recognition is generally very unsafe to go on, yet in this case I think there are sufficient corroborative circumstances to warrant conviction of prisoners Nos. 8, 9, 11 and 12, namely, the mohurrir immediately arriving at the village after the occurrence, and learning the names from the wounded man, who having seized No. 8, and being wounded by No. 9, could not be mistaken as to those parties, the mohurrir on searching finding Nos. 8 and 9, absent, and subsequently the attempt of Nos 11 and 12, to escape when he went to their house and his seizing No. 11, in the act of carrying off part of the plundered property.

There can be no doubt that the prosecutor was wounded by prisoner No. 9, I therefore convict No. 9, of dacoity and with wounding the prosecutor, and sentence him to seven years' imprisonment with labor in irons, and Nos. 8, 11 and 12, with dacoity; No. 11, having a portion of the plundered property in his possession; and sentence them each to five years' imprisonment with labor and irons.

The prosecutor, both before the Magistrate and this Court, stated that the amount of property plundered was more than that he mentioned in the mofussil, which he accounts for from being confused from the wound in his head when he gave in the list to the mohurrir. Considering, however, that the original list should be adhered to, I direct that a fine of Rupees 29-2-6 be levied under Act XVI. of 1850 from the defendants individually and jointly, and the amount paid to the prosecutor, the above sum being the difference between the value of the property plundered and the value of the property recovered.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley). The grounds of appeal are, that the Sessions Judge did not sufficiently consider the evidence produced

for the defence. We find, on perusal of the record, that three of the prisoners, Nos. 8, 9 and 11, have each taken a line of defence before the Magistrate, which they have entirely changed before the Sessions Judge. For instance the prisoner No. 8, states to the Magistrate that prosecutor has brought the charge against him from ill-will arising out of the following circumstances. The prosecutor is in the habit of making an annual donation of a pair of shoes to each chowkeedar, but for some cause refused to give him, the prisoner, a pair, and in return, the prisoner at a sacrifice in Tara Poddar's house would not give the prosecutor a share of the head of the buffalo, which was killed on the occasion. At the Sessions the prisoner states that he caught the prosecutor's brother in an intrigue with a Dome girl and he consequently lost caste; and hence the prosecutor's ill-will towards him. The prisoner called twelve witnesses for the defence, but would only examine three, Nos. 27, 28 and 29, and these give no evidence in his favour. The defence of the prisoners Nos. 9 and 11, before the Magistrate and Sessions Judge, vary to an equal extent, and though prisoner No. 9, called nine witnesses, and prisoner No. 11 called five witnesses for the defence, neither prisoner would allow them to be examined, but rested their case on the evidence of witnesses Nos. 27, 28 and 29, named by prisoner No. 8, and these witnesses, as observed above, give no evidence in their favour. The prisoner, No. 12, asserts that he slept in the house of Doola Dome, and calls six witnesses to prove the fact. He examined three, and though they depose to his being in that house in the night in question they do not prove that he was there throughout the whole night.

The objection, therefore, urged in appeal, falls to the ground, as the evidence for the defence, has, as far as it was required by the prisoners, been recorded and considered.

The Court draw the attention of the Additional Sessions Judge to the provisions of Clause 7, Section 7, Regulation IV. of 1797, and to para. 12 of Circular Order 16th July 1830, No. 54, of Vol. 2, page 121 Carrau's Ed., which require that contradictions in the evidence should be noted by the Sessions Judge in his proceedings. The Court consider the evidence of the eye-witnesses Nos. 2, 3, 4 and 5, from their manifest exaggerations and contradictions, unworthy of credit. The statement of the prosecutor, naming several individuals as concerned in committing the dacoity, given to the thannah mohurrir so immediately after the occurrence, corroborated by the fact that neither prisoner, No. 8 or 9, could be found at their post or in their houses, and that the prisoner No. 11, was shortly after apprehended with stolen property upon him, while attempting to escape, bears the appearance of truth, and can, we think, be admitted as worthy of credit. We do not think the evidence

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against the prisoner No. 12, Heera Dome, sufficient; for rejecting the evidence of the witnesses, there is only the recognition of him by the prosecutor, and he was not clearly identified as the party who made his escape when prisoner No. 11, was seized, nor was any property found in his possession. We therefore direct that this prisoner, No. 12, be released; and we reject the appeal of the other three.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Backergunge.

KULLEEM AHKOOND (No. 6.) MONAGI (No. 7.) MUNGUL SHIKDAR (No. 8.) AMEEROODDEEN (No. 9.) JAHANGEER (No. 10.) TURIBOOLA (No. 11.) AND KAMAL PEAREE (No. 12.)

1857.

June 19.

Case of  
KULLEEM  
AHKOOND.  
and others.

CRIME CHARGED.—1st count, wilful murder of Maizoodeen; 2nd count, affray attended with the culpable homicide of Maizoodeen and the wounding of Dhonayi.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 9th April, 1857.

Prisoner released; owing to the doubt of the evidence arising in a great measure from the laxity of the proceedings of the Magistrate and Police.

*Remarks by the Sessions Judge.*—The Officiating Law Officer would convict the prisoners; I would acquit them. Pending this reference, the prisoners will be admitted to bail.

The affray, in which the deceased Maizoodeen was killed, took place on the 26th of November last. Intimation of this occurrence was given to the mohurrir of the out post of Rajapore on the evening of the above date. The mohurrir proceeded without delay to the spot, and on the night of the same date, found the body of the deceased lying near a cow-house belonging to the dwelling of the prisoner Jahangeer No. 10.

The “*post mortem*” examination by Dr. Scaulan, witness No. 11, resulted in an opinion, that the deceased had died from shot-wounds. Three shots were extracted by the Assistant Surgeon from the thorax of the deceased, and were produced in Court.

Unquestionably an affray took place; and that the deceased was shot in the affray, admits of no doubt, but I cannot convict the prisoners, nor do I believe them to be guilty for the following reasons.

It appears that more than a month previous to the affray, the Magistrate received intimation that *lattyals* were assembled in the village of Alghée with the intention of committing an affray. The Magistrate was fully informed by his police of the causes which led to this illegal assemblage. It appears that Buxoola, the father of the prisoner Mungul Shikdar, No. 8, unable to endure the oppression of his talookdar Bissessur Roy, who is also a powerful and influential zemindar, had sold his *dowlate* to Pertab Narain Roy, another zemindar, under whose protection he placed himself. This step of course gave great offence to Bissessur Roy, and the attempts of Pertab Narain Roy to obtain possession and to collect the rent from the ryots of his purchased property were stoutly resisted, both parties collected *lattyals*. The *lattyals* of Pertab Narain were assem-

Buxoola was absent at the time of the affray, and his house abandoned by his family.

bled in the house of Buxoola\* and those of Bissessur Roy in the house of Duuno Shikdar, the mofussil agent of Bissessur

Roy.

On the 6th of October, 1856, the Magistrate received intimation from the mohurrir of the out post of Rajapore, that an affray might at any time be expected, and the mohurrir suggested that stringent measures should be adopted towards the principals, viz. the aforesaid Bissessur Roy and Pertab Narain Roy. On the receipt of this report, the Magistrate directed these parties to appear within three days in person, or by attorney, to be examined. On the 3rd of November, Pertab Narain Roy, urging that he was sick and could not come, appeared through his attorney and denied all participation in any intention to commit an affray. On the 17th of November, Bissessur Roy appears through the same agency and gives the same answer. In the meantime, or between the 6th of October, and 17th of November, reports had been received by the Magistrate from his police, which belied the above answers. The principals were at last summoned, but this again was countermanded on the 25th of November, and the affray took place on the 26th of November. On the 9th and 18th of February, Bissessur Roy and Pertab Narain Roy were bound down in recognizances to the amount of rupees 5,000 each, to keep that peace, which had been openly and grossly broken by them upwards of two months before.

That under the above circumstances an affray should take place is matter of little surprise. It is much to be regretted that more stringent measures were not adopted. A personal visit by the Magistrate in October, 1856, instead of in December, 1856, after the affray, even the deputation in October, of an active darogah or the immediate call for recognizances from both parties were all, and each of these means which might

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have prevented this gross outrage, and probably saved the life of a fellow-creature.

It is admitted by the wife, father and mother of the deceased, that he had taken service with Bissessur Roy some three months before the affray took place, doubtless as a professional *lattyal*. Another close relation of the deceased, one Domae, who is named and amongst the parties to the affray, and who, it is alleged, was wounded (but of this there is no proof) also took service with the same party, and doubtless for the same purpose.

After the affray, the zemindars seeing the fatal result, made up matters for a time, and the *lattyals* dispersed; the features of the crime have been softened down, the prisoners have been made scape-goats of, a certain number of the ryots on both sides, who are obnoxious to their landlords, have been made defendants, and the real offenders and their instigators have been visited with no punishment at all.

With the influence and wealth possessed by the principal parties to this affray it was an easy matter to them to pay a few witnesses to swear to the presence at, and participation in, the affray, of the prisoners who are on their trial, but this evidence is utterly untrustworthy.

The prisoners are not *lattyals*, nor are they even charged with being such. The prisoner No. 8, Mungul Shikdar, is quite a youth, say from eighteen to nineteen, but then he is the son of Buxoolla, who is so obnoxious to Bissessur Roy. This prisoner, it is alleged, shot the deceased, and that too in the most deliberate manner. It is alleged that the parties assembled on the two opposite banks of a small *khal*; that much abuse was interchanged between the parties; that the prisoner No. 8, Mungul Shikdar, was armed with a double barrelled gun; that he fired both barrels, the first without effect, the second with a fatal result. The other prisoners it is alleged, were present aiding and abetting in the affray. The prisoners are residents of Alghee, and they are ryots, they one and all plead *not guilty*, both before the Magistrate, and in this Court.

I shall now proceed to analyze the evidence, and in doing this I must necessarily enter into some detail.

Information of the affray was given by Omed Allee, the chowkeedar of Rajapore; Hubeelboollah, the acting chowkeedar of Alghee, in which village the affray took place, arrived at the thannah shortly after the aforesaid Omed Allee, but his statement was not recorded until the twenty-ninth. The man who holds the substantive appointment of chowkeedar of the village of Alghee, one Sazawal Khan, was kept out of the way, and there was a good reason for this, for it was this very man, who had informed the police in October last, that the two zemindars mentioned in a former paragraph were collecting clubmen to commit an affray.

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Omed Allee is the ryot of Ram Ram Punganun, who again is subordinate to the Rai Kattee zemindars, of whom Pertab Narain Roy is one. In his first statement before the police, this man is very careful not to say too much for or against either Bissessur Roy or Pertab Narain Roy, he states that from fifteen to sixteen men on either side were engaged in the affray, and strange to say he names exactly the same number or eight men of either side as present in the affray. To a question put to him by the mohurrir, this witness stated that he could not "then," the day of the affray, say "exactly" who were the eye-witnesses to the affray. The fact is, they had not been prepared at that time. The statement of this witness was recorded on the 26th of November. The statement of the remaining eye-witnesses

- No. 2, on the 29th Nov. 1856.
- " 3, on the 3rd Dec. 1856.
- " 4, on the 3rd Dec. 1856.
- " 5, on the 1st Dec. 1856.
- " 6, on the 3rd Dec. 1856.
- " 7, on the 1st Dec. 1856.

were recorded by the police on the dates noted in the margin.\* These dates must be borne in mind by the superior Court in coming to a decision in this case.

The corpse of the murdered man was found outside, but near a cow-house of the "baree" of the prisoner No. 10, Jahangeer. It is admitted that the "baree" was abandoned by its inmates. The prisoner Jahangeer, No. 10, it is alleged, was present in the affray on the side of Pertab Narain Roy. On a reference to the map drawn by the police, I find that the house of Jahangeer is situated on the opposite side of the *khal* (which, it is alleged, divided the two parties to the affray) to that on which the deceased was standing when he was shot; the deceased was a partisan and hired servant of Bissessur Roy. Now it is not probable that the partisans of Pertab Narain Roy should bring the corpse across this *khal*, and leave it so near the house of Jahangeer as to throw suspicion upon him, one of their "own party." It is much more probable that after the affray (which, it is alleged, took place late in the evening) at dark, and after the *lattyals* on either side had dispersed, that the partisans of Bissessur Roy should carry the body across the *khal*, and throw it down near the cow-house of the prisoner Jahangeer to throw suspicion upon him, and, through him, upon Pertab Narain Roy. These tactics will be understood by any one acquainted with the natives.

Hubeboollah witness No. 2, acting† chowkeedar of Alghee, the ryot of Bissessur Roy, in his

† This man was appointed some five days before the affray.

first statement before the police, recorded on the 29th November, states that he did not "actually" witness the affray or the death of Maizoodin; he heard the circumstances attending the affray and the result from the witness Omed Allee, but this witness No. 2, alleges that he saw the parties to the affray dispersing



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here and there after the affray, and amongst them recognised the prisoners No. 8, Mungul Shikdar, No. 10, Jahangeer, No. 11, Turiboollah, No. 12, Kamal Raree. This witness at the thannah names eleven men, whom, he alleges, he recognised on the side of Pertab Narain Roy, and six only on the side of his zemindar, Bissessur Roy. The partiality, and consequently the untrustworthiness of this witness, peeps out in this little circumstance. Further, all the parties named by this witness are *ryots*, not a single *lattyal* is named, again the evidence of this witness, who, for the time being, was the chowkeedar of the village of Algher, where the affray took place, was not immediately recorded, but on the 29th of November. He had plenty of time given to him to prepare his story and he has been very chary of implicating his zemindar too deeply. In this Court this witness increases the number of the parties recognised by him on the part of Pertab Narain Roy from eleven as stated before the police to sixteen. This shows the animus of the witness.

The witness No. 3, Shookur Mahomed, is also a *ryot* of Ram Ram Panchanun. He states that he witnessed the affray and saw the prisoner No. 8, Mungul Shikdar, shoot the deceased. The evidence of this witness was not taken by the police until seven days after the affray. How it became known to the police that this man and the other witnesses were eye-witnesses to the affray, does not appear on the record. At the thannah this witness states that he is the *ryot* of Doorga Doss Buttcharge. Before the police this witness named fifteen men as recognised by him on the side of Pertab Narain Roy and ten on the side of Bissessur Roy. The witness states in this Court that he went hearing the noise, and witnessed the affray, there was no necessity whatever for his going, and the map shews that a *khal* intervenes between his house and the scene of the affray. Further, from inspection of the record of a case of October, 1850, it would appear that this witness was plaintiff in a case in which he charged the prisoner No. 8, Mungul Shikdar, with cutting and stealing at night a tree, the property of the witness, this charge was reported to be false by the police. Considering this feud coupled with the delay that elapsed before the witness gave his evidence before the police, and the entire absence of any good reason why the witness should cross over a *khal* and voluntarily make himself a witness to an affray between the partisans of two powerful zemindars, a position, which of all others, is avoided by a native, leads me to a conclusion that the testimony of this witness cannot be depended upon, and that he has been actuated by motives of enmity towards the prisoner No. 8, Mungul Shikdar.

The witness No. 4, Zureefoollah is also a *ryot* of Ram Ram Panchanun. This witness before the police named eleven men

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as recognised by him on the side of Pertab Narain Roy, and ten on the side of Bissessur Roy, in this Court he names twelve on the part of the former and six on the part of the latter. My remarks on the evidence of witness No. 3, Shookur Mahomed, apply to this witness with this difference, that this witness was not the plaintiff, but a witness to the charge of theft brought by Shookur Mahomed against the prisoner, Mungul Shikdar, and which turned out to be a false charge. Before the police, this witness stated he was the ryot of Ramkomar Butto-charge.

The witness No. 5, Gole Mahomed, inhabitant of Rajapore, ryot of Greesh Chunder Chatterjea, deposes to having witnessed the affray and the death of Moizoodin on the spot at the hands of the prisoner No. 8, Mungul Shikdar. His reason for going to the scene of the affray is, that he heard a noise and therefore went. At the thannah this party admits that he ran away from his house on the night of the affray "from fear of being made a witness," it may well be asked what made him, the inhabitant of another village, leave his house at all to witness an affray in another village; again this man, who is so afraid of being made a witness, coolly names no less than seventeen on the side of Pertab Narain, and ten on the side of Bissessur as recognised by him in the affray, and he sticks to these numbers in this Court doubtless his scruples in the matter of giving evidence have been removed, and his fear allayed by a sufficient consideration.

The witness Julay Khan, No. 6, is the ryot of Ram Ram Panchanun. This party has given evidence in another case, in which Monirooddeen was plaintiff, and Buxoolah, the father of the prisoner No. 8, Mungul Shikdar, was defendant. Before the police he stated he was a ryot of Ram Comar Buttacharjea, his evidence was not recorded until the 3rd of December, seven days after the affray. This witness also went to the scene of the affray "hearing a noise," yet he is not named as an eye-witness by the chowkeedar, Omed Allee, in his first statement on the 26th of November. In this Court, this witness names nine on one side and eight on the other as present in the affray, at the thannah he named eleven on one side and ten on the other.

The witness Pursoolah, No. 7, also gave evidence in the case in 1850, in which Shookur Mohamed, witness No. 3, was plaintiff, and the prisoner No. 8 was defendant. This witness too accompanied the mohurrir on the night of the affray, and was a witness to the inquest, but his evidence as an eye-witness to the affray is not recorded until the 1st of December, five days after the affray.

At the request of the prisoner, Mungul Shikdar, No. 8, the case of an alleged dacoity upon a boat, in which the father of

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the prisoner was made defendant, was sent for from the Magistrate's Court and inspected. I find that Buxoolla, the father of the prisoner No. 8, was charged with dacoity, and that this charge was pronounced by the Magistrate, on the 26th September last, to be clearly false "and probably got up by the ryots and dependents of Bissessur Roy," so it is clear that the son of Buxoollah has been made to figure prominently in the present case, to satisfy the enmity of Bissessur against the father. Buxoollah was absent at Raikattee at the time of the affray, or doubtless he would have been named, or perhaps Bissessur Roy after the unsuccessful attempt to injure Buxoollah by charging him with dacoity, deemed it more prudent to select the son for his victim on the present occasion.

With these remarks, I leave the case of the prisoners in the hands of the Court; if in the judgment of the Court, the prisoners be guilty, the punishment should be commensurate with the crime, and a severe example should be made, for in this district affrays are common and attended generally with loss of life. Hitherto the *soolfee* has been the usual weapon, but in this affray a gun has been used and a man shot down like a dog.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prominent facts recorded in the evidence for the prosecution, are these:—that seven eye-witnesses (not eight as entered in the calendar) saw prisoner No. 8 fire from a double-barrelled gun, shot, which killed deceased and wounded one Donoye; that there were men of two parties; viz. Bissessur's and Pertab Narain's, on opposite sides of a *khal*, each party consisting of members varying from ten to sixteen, prisoner No. 8 being armed with a double-barrelled gun, and the others with *lattees* and spears; that the collision arose from prisoner, No. 8 desiring to interfere with the crops of prisoner No. 12; that the body of deceased was found near the premises of prisoner No. 10; and that he and prisoners Nos. 6, 7, 9, 10 and 11 were engaged with prisoner No. 8 on Pertab Narain's side; and that No. 12 called *dohai* on the other side.

If the evidence for the prosecution could be credited, the conviction of prisoners Nos. 6, 7, 8, 9, 10 and 11, would necessarily follow; but there is so much to make us feel doubtful of it, that we concur with the Sessions Judge in considering that it would be unsafe to find the prisoners guilty upon it.

The reasons for this opinion are to be found in the following circumstances on the record.

The crime charged took place on the 26th November, 1856, about 4 or 5 P. M. The nearest police station was the *pharee* of Rajapore, where Omed Ali, chowkoedar, gave information of the occurrence on the day of it, in the evening. (*Sondyér som-oie.*) The distance of the *pharee* from the place of the occurrence is under two miles, as comes out in evidence, though

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not stated as it should have been in the first police report. This Omed Ali, the *first* witness, states that Hubeeboolla, acting chowkeedar, was with him, and called *dohai* on seeing the occurrence; and he adds that he saw the gun fired by prisoner No. 8, and deceased fall. He also names prisoners, Nos. 6, 7, 8, 9, 10 and 11, as present armed, and No. 12 as not armed; but calling *dohai*. This witness cannot, however, say, who were eye-witnesses. Hubeebollah, the *second* witness, says at the police that he ran up and saw Omed Ali, who told him what had occurred, and left him in charge of the body; but that as he was frightened by the prisoner, No. 8, he (witness No. 2,) ran away to the *pharee* at Rajapore. The statement of this witness No. 2, at the police is not recorded till the 29th November; and this delay, for which no satisfactory explanation is given, materially diminishes the credibility of the evidence of this witness. The *third* eye-witness (and it may be here remarked, that we are not able, as we ought to be able, to find out from the record, how it was ascertained who were eye-witnesses) did not make his statement to the police till the 3rd of December. The only excuse for this delay to be found on the record is that the witness was for two days away from the spot; but this in no way accounts for the delay from the 26th November to 3rd of December. This witness admits to the Sessions Judge that he brought complaints a year ago against the parties to whom his present testimony is unfavorable. The *fourth* eye-witness made no statements to the police till the 3rd December, and he also admits that he gave evidence in a previous case against the father of prisoner No. 8. The *fifth* witness gave his statement to the police on the 1st December. He stated to the Magistrate that he *heard* of the death of the deceased, though he *saw* the shot fired, and deceased fall. The *sixth* eye-witness was first examined on the 3rd December, though he admits he was only absent for two days after the occurrence. This witness admits to the Sessions Judge that he had before given evidence against some of the prisoners. The *seventh* eye-witness was first examined only on the 1st December; and no sufficient reason is given for the delay. The *eighth* eye-witness was first examined on the 29th November, and he states that he *heard* the shot, and that deceased fell; that prisoner No. 8, had a gun and the others *lattees*. But the whole tenor of his evidence appears to us to be that of a person who did *not* see the actual occurrence.

The further evidence for the prosecution, entered in the calendar, refers to previous collections of men on both sides, and not to that immediately connected with this occurrence.

Referring to all the above circumstances, we think that a conviction would be unsafe, and desire that the prisoners be immediately released.

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We must at the same time record that it was an occasion for the most active and prompt measures on the part of the *Magistrate*. He should have *himself* gone to the spot at once, and *not eight days after* hearing of it; or if he could not go, he should on *the first report* have sent down a Deputy Magistrate, or first class officer to the locality, with a view to a close direction and superintendence of the whole proceedings. The earlier paras. of the letter of the Sessions Judge show that the Magistrate had full information of the nature and tendencies of the dispute; and we think it necessary to record that the steps taken by the Magistrate, as there reported by the Sessions Judge, were quite insufficient to preserve the peace, and were of an undecided character. The locality too by the map appears by no means distant from the sudder station. Owing to the laxity of the Magistrate and the police, a breach of the peace and murder by gun-shot have taken place within a mile or two of a police *pharee* with a mohurrir at it; and no efficient measures have been taken to secure the apprehension and conviction of the parties concerned, or bring home the crime to the murderer. We consider the result of the case as very discreditable to the Magistrate and the police. We cannot find any enquiry even as to the identity and ownership of the gun, or any endeavour to get a clue to the previous or subsequent movements of the prisoner No. 8.

We observe that the use of fire-arms seems, from other cases on the records of this Court, frequent and fatal in the Backergunge district. We desire therefore that a copy of these remarks be forwarded to the Hon'ble the Lieutenant-Governor, in order that His Honor may order measures in the Department of Police with a view to a repression of such crimes, if His Honor should consider it necessary or expedient to do so.

Hooghly.

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Case of  
PREYMCHUND  
CHUNG.

Prisoner convicted. Remarks on grounds of reliance on testimony of approvers in this case.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT, PROSECUTOR

*versus*

PREYMCHUND CHUNG.

CRIME CHARGED.—1st count, dacoity on the night of 1st March, 1848, in the house of Gopaulehunder Dutt of Moosooryah, thannah Baripore, zillah Hooghly; 2nd count, dacoity on the night of the 3rd September, 1852, in the house of Kangalee Sheikh of Baneshwarpore, thannah Benipore, zillah

Hooghly and 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Sekur Roy, Deputy Magistrate under the dacoity Commissioner at Hooghly.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Hooghly, on the 18th April, 1857.

*Remarks by the Additional Sessions Judge.*—The prisoner is charged with two specific dacoities and having belonged to a gang of dacoits.

The prisoner pleads *not guilty*, but attempts no defence and does not call any witnesses.

The charge in count I, viz. dacoity in the house of Gopaulchunder Dutt which took place on the night of March 1st, 1848, village Moosooryah, is supported by the testimony of the two witnesses Nos. 1 and 2, which is corroborated by witness No. 1, having been suspected at the time and when apprehended making *quasi* confessions before the Police and Magistrate in which he named the prisoner, witness No. 2, and several others of whom Modhoo Chung has since been transported for life. Count II, dacoity in the house of Kangalce Sheikh of Baneshwarpore, on the night of the 3rd of September, 1852. The only direct evidence against the prisoner in this case is the testimony of the approvers, but as such has been found trustworthy by the

\* Vide Sudder Nizamut Adawlut Reports, Vol. II of 1856, page 717.

conviction\* of Bhugwan Goala, whom they denounced throughout and long before his apprehension I see no reason to ques-

tion their evidence.

The prisoner is denounced as having taking part in eighteen dacoities.

Considering the charges against the prisoner satisfactorily established, I convict him of the dacoities charged and of having belonged to a gang of dacoits, and recommend that he be sentenced to imprisonment in transportation beyond sea for life with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The testimony of the approver-witnesses is, in this case, well corroborated; and especially as to the prisoner's participation in the dacoity charged in the first count, by prisoner's own statements to the Police and the Magistrate at the time, viz., early in March, 1848. The testimony of the approvers also agrees with their general confessions. Of these that of the one witness was taken more than a year before prisoner's apprehension, and that of the other six months before. The testimony of the approvers as to the identity of parties engaged in the second dacoity charged is consistent, and appears trustworthy. We observe, however, that the Deputy Magistrate's abstract makes it appear, that both Kina and Bhugwan Goala were sentenced to transportation on

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Case of  
PREYMCHUND  
CHUNG.

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CHUNG.

30th September, 1856, whereas it was the latter only. We remark that the Deputy Magistrate certifies (and the Commissioner countersigns the certificate) that Chunder Doolye was arrested in Rajshahye, where he had been some time before, and had not access to witness No. 1, or to any information derivable from the records; and that the dacoities charged were not known, when the witness No. 1, (Jugoo) was taken. We sentence the prisoner to be transported for life under Act XXIV. of 1843.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

MOOMREZ GAZEE.

24-Pergun-  
nahs.

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Case of  
MOOMREZ  
GAZEE.

Prisoner convicted and sentenced under Act XXIV of 1843, on evidence of approvers; collusion being impracticable. Attention drawn on delay in commitments, and on identification of prisoner.

CRIME CHARGED.—1st count, dacoity on the night of the 25th or 26th April, 1846, in the shop of Bydonath Ghose at Tengra-ghat, thannah Goburdangah, zillah Nuddea; 2nd count, dacoity on the night of the 23rd March, 1849, in the house of Ramjoy Kollu of Auchra, thannah Kaguzpookooria, zillah Nuddea; 3rd count, dacoity on the night of the 15th January, 1850, in the house of Hafiz Sirdar of Sankareepotta, thannah Kaguzpookooria, zillah Nuddea; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, dacoity Commissioner at Hooghly.

Tried before Mr. T. C. Loch, Additional Sessions Judge of the 24-Pergunnahs, on the 6th May, 1857.

*Remarks by the Additional Sessions Judge.*—The prisoner is charged with three specific dacoities and with having belonged to a gang of dacoits.

The prisoner pleads *not guilty*, denies all knowledge of the approvers, names three witnesses who cannot be traced by the Police and consequently were not examined.

Every precaution was taken by the dacoity Commissioner to prevent collusion, Bodon witness No. 1, was kept at Alipore while Sonna Hajjam witness No. 3, was kept at Hooghly.

Count 1, dacoity in the shop of Bydonath Ghose at Tengra-ghat on the night of the 25th or 26th April, 1846.

The prisoner is denounced in this dacoity by witnesses Nos. 1 and 2. There is no direct corroborative evidence against him but the statements of the two approvers, who were kept entirely apart, agree and are consistent throughout. They

name the same man as the spy, Anund Ghose, who has since been sentenced to transportation. Witness No. 1, also named several other parties among whom Matabdee Sirdar, Teencowree Joogee, Teetoo Sirdar or Shookoor (witness No. 2, who have all been sentenced as professional dacoits), I therefore see no reason to doubt the witnesses' statement.

Count II, dacoity in the house of Ramjoy Kollu of Auchra, on the 23rd of March, 1849.

The prisoner in this case is also denounced by the witnesses Nos. 1 and 2. At the time four of the chief dacoits were named, viz. Mokeem, Matabdee, Teencowree and Ameer, the three first were sent to the Magistrate but subsequently released, their names, however, are given by the witnesses as also that of the prisoner. The witnesses could not have colluded as they were kept so completely separate.

Count III, dacoity in the house of Hafez Sirdar of Sankareepotta, on the night of the 15th of January, 1850.

The witnesses Nos. 1 and 3, denounce the prisoner in this case. Their statements in all material facts agree, they could not have colluded from the precautions taken; the fact of the buffaloes being found near the house and the remark about the two up-country durwans tends greatly to give an air of truth to their statements, and as there could be no object in naming the prisoner I believe them.

There is a list of twenty-six dacoities attached to the dacoity Commissioner's *nuthee* in which the prisoner has been denounced. Considering that the dacoities charged are established against the prisoner and also of his having belonged to a gang of dacoits, I convict him of the same and recommend that he be sentenced to imprisonment in transportation beyond sea for life with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner's guilt is quite clear. Our opinion of the evidence for the prosecution as to the dacoity in the house of Hafez Sirdar may be best given by a reference to the three first paras.\* of page 406, September 6th, 1856, Volume

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Case of  
MOOMKEZ  
GAZEE.

\* Not only have the statements of the two approvers been consistent throughout as to the incidents of the affair, the names of those engaged in it, and the complicity of these two prisoners, but they agree with each other in a very remarkable way, and

S. N. A. 1854, II. 157.

that combination and collusion, which the Court are of opinion is far from impossible under the present system, *was impossible in this particular case.* The witness Sona Hujjam, confessed at Hooghly to this Sakareepotha dacoity on the 20th August, 1855, and the witness Budon, at Allipore, on 25th April, 1856. Sona had been a convict in the Allipore jail three or four years, but was transferred to the Dacoity Commissioner's Office at Hooghly on 9th August, 1855, on expressing a wish to confess to several



|                 |                                                                                                                                                                                                                                                             |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1857.           | in the case noted in the margin* that the circumstance of witnesses having previously named a prisoner although absent in a case against a third party is such a corroboration of the truth of subsequent direct testimony, as to render it trustworthy and |
| June 22.        | * Government                                                                                                                                                                                                                                                |
| Case of         | <i>versus</i>                                                                                                                                                                                                                                               |
| RAMMOHUN        | Surroop Chunder Roy.                                                                                                                                                                                                                                        |
| <i>alias</i>    | Sudder N. A. Reports, 1856, I.                                                                                                                                                                                                                              |
| MOHUN DOSS 915. |                                                                                                                                                                                                                                                             |
| KYBURT.         |                                                                                                                                                                                                                                                             |

reliable.

The prisoner has been frequently compromised in dacoity cases, other than those above alluded to, and has also been required to furnish security for good behaviour. His defence in the lower Court was, that the 1st approver-witness has denounced him from spite, owing to a quarrel they had twelve years ago about some tobacco in which prisoner *professes* to deal, but that although he is acquainted with the 2nd approver (alone an admission almost of association with a dacoit) they have had no dispute or disagreement. Before me, he says he is not acquainted with the 1st witness, and that it was the second witness he has a quarrel with about tobacco a year ago only. He calls witnesses to character only who do not give him a good one.

The Dacoity Commissioner should have brought the prisoner to trial sooner. He was apprehended I see on the 12th July, and not committed to the Sessions till 1st December, 1856.

I convict the prisoner of having belonged to a gang of dacoits, but as he is seventy years of age, very feeble and suffering much from disease, I only sentence him to seven years' imprisonment without labor or irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We concur in the conviction, on the ground set forth by the Additional Sessions Judge. The prisoner appeals on the ground that the Sessions Judge did not sufficiently consider his defence i. e. of good character, and that one of the approvers was his (prisoner's) enemy, owing to prisoner having refused him half a maund of tobacco at the marriage of the approver's daughter; but his pleas on this point are most contradictory and in no way substantiated. The Additional Sessions Judge has stated the prisoner's age at seventy or eighty; but in the Commissioner's record, it is stated at sixty. If the sentence was made so light on account of the prisoner suffering from disease, a medical certificate should have been recorded. We reject the appeal.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND GOLUCKCHUNDER GOOHO

*versus*

KHOSAUL KAREEGHUR BISWAS (No. 3,) BUDDER-  
UDDY KAREEGHUR (No. 4,) HANEEF KAREE-  
GHUR (No. 5,) KANOO KAREEGHUR (No. 6.)  
OMEDALLY KAREEGHUR (No. 7,) PAYLAN HAZEE  
KAREEGHUR (No. 8,) AND SUDDERDEE KAREE-  
GHUR ALIAS BANDUB KAREEGHUR (No. 9.)

Dacca.

1857.

CRIME CHARGED.—Riotously attacking prosecutor's house  
and forcibly taking therefrom his sister Kripamohee.

Committing Officer.—Mr. J. H. Ravenshaw, Officiating Ma-  
gistrate of Furreedpore.

Tried before Mr. J. E. S. Lillie, Sessions Judge of Dacca, on  
the 15th April, 1857.

June 25.

Case of  
KHOSAUL  
KAREEGHUR  
and others.

*Remarks by the Sessions Judge.*—The prisoners were first  
charged "with having made away with Kripamohee;" but I re-  
turned the case to the Joint-Magistrate for a fresh commitment  
upon the above charge.

Prisoners con-  
victed; pleas  
in appeal be-  
ing overruled.  
Remarks on  
conditional  
sentence.

The particulars of the case are these, prosecutor having pre-  
ferred a complaint against some of the followers of Doodoo  
Meah of plundering his house, was asked by one of the accused  
to compromise the case, and refusing to accede, was threatened  
by him.

Prosecutor was absent from his house on the night of the pre-  
sent occurrence, and had removed his family with the exception  
of his sister, a widow, whose age seemed to secure her from  
violence.

An armed force of Doodoo Meah's followers attacked prose-  
cutor's premises during the night, to reopen the mat house in  
which Kripamohee was sleeping,  
and forcibly carried her off.  
Three witnesses\* distinctly re-  
cognised all the prisoners.

- \* No. 1, Sheikh Gopaul.
- " 2, Sookoor Mahomed.
- " 3, Gooroo Doss Dutt.

No trace of the woman has been discovered, although a search  
has been instituted in every likely direction.

All the prisoners pleaded *alibi* at various places in zillah  
Backergunge; but the few witnesses, who have given evidence  
which might establish those pleas, are undeserving of belief;  
because, though they specify with great precision the dates on  
which they aver that they saw the different prisoners in zillah  
Backergunge, yet, when cross-examined, they are entirely ig-

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Case of  
KHOSAU  
KAREEGHUR  
and others.

norant of the dates of more recent and more memorable occurrences.

I concur in the *futwas* of the law officer which convict all the prisoners. Their guilt is clear. The outrage is of an aggravated description, evincing the most determined lawlessness and intimidation, and is deserving of more severe punishment than I can inflict. I would recommend that the prisoners be imprisoned for five (5) years with labor in irons, and if Kripamohee be not found within two months, that they be imprisoned for a further period of seven (7) years. The above sentence is in conformity with approved precedents at Volume II, page 447, and at Volume V. page 176, of the reports of the Nizamut Adawlut; except that in those cases the second or conditional imprisonment depended upon the finding of the missing persons within the term of the first or fixed punishment, instead of within the period I have named, which appears to be sufficient for the production of Kripamohee, if she be alive.

It will be observed that I postponed the decision in regard

\* No. 6.

to one prisoner,\* as some of his witnesses had not arrived, but as

those witnesses have since been examined, and the case has been decided in regard to that prisoner, I have included all the prisoners in this reference.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Counsel for prisoners, Baboo Kishen Sukha Mookerjea, pleads, on the merits, that the distance, the hour, the confusion, and the state of the light prevented the witnesses really seeing what they depose to have seen; that there are discrepancies in the evidence, and that the charge has been falsely made from enmity. He adds that the sentence is illegal, and cites a passage\* (page 570, paragraph 2978 *ad finem*) from Mr. Beaufort's Guide in support of this plea.

We have carefully considered the evidence for the prosecution, and do not find it untrustworthy. It is clearly proved that these prisoners are followers of Doodoo Meah; that Doodoo Meah wished prosecutor to withdraw a complaint he had made against that person, and that prosecutor refused; that a threat

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\* "But in later cases it has been held objectionable to pass such conditional sentences. A conditional sentence of this nature is said to be objectionable when there is no presumption that the missing person has been murdered, but a conditional sentence for murder has unnecessarily been passed when there was no presumption of murder, and tended to throw a doubt on the evidence on which the sentence was grounded, and the prisoners were therefore sentenced at once to such terms of imprisonment as appeared suited to their respective degrees of guilt, with a view to encourage the production of the missing person."

was then made that prosecutor should be treated like a person named "Kali Kajelal" had been treated. It is proved that the prosecutor's house was attacked and the prosecutor's sister taken away. The night was moonlight; the occurrence was witnessed from a raised mound; the witnesses Nos. 1 and 2, were persons hired to watch and protect the premises; and the witness No. 3, an inmate of the house. The distance of forty or fifty cubits is the extreme one stated as that of any witness from the locality of the occurrence, and the minor discrepancies are not of such nature as to outweigh the preponderating evidence to the truth of the charge.

We proceed to the consideration of the pleas, in defence, of the individual prisoners.

No. 3, pleads that his name is not *Kareeghur*, but *Biswas*; that he does not live in *Chowda russee*, but in *Sath russee*; and that he is an aged religious tutor, and was absent in that capacity in Gooabaria in zillah Backergunge, with Ramjan Akhoond from the 15th Kartick to 14th Poos. The evidence does not support his plea that he is not the individual charged; and he is duly identified as such. The evidence to the *alibi* is not of that nature to shew that by no reasonable conclusion was it possible for this prisoner to have been present at the offence charged.

No. 4, pleads that this case is got up from the enmity of Kasi Chowdry to Doodoo Meah; and that on 26th Aghun prisoner was at Bhodye's house at Noorpore, and on 27th at Shah Bunder. The witness Bhodye does not prove the *exact* date (he says three or four days of Aghun remaining) nor is it shewn that the distance (three *phurs*) was too great for prisoner to have been present; (especially considering the means of water-carriage in those parts;) nor do the other witnesses substantiate the prisoner's plea.

Prisoner No. 5, also speaks of the enmity of Kasi Chowdry as the cause of this false charge; and says, the case arose from one Nayamooddeen, a follower of Doodoo Meah's, not withdrawing a complaint against Kasi Chowdry, whose relative prosecutor is. This prisoner adds that he is not a Ferazee, i. e. a follower of Doodoo Meah. He pleads that he went to Kalorea Bunder when four or five days of Kartick were remaining, and did not return till 13th Poos. He adds at the Sessions that he was engaged in taking fruit, and a note from Nilkomul Roy's Naib to Nilkomul's house at Bowfal in Zillah Backergunge, and in selling cloths. Certain witnesses depose to these averments, but not in a manner which shews that prisoner intermediately could not have been engaged in the offence charged.

Prisoner No. 6, says that he is not *the* Kanoo charged; and that he has been denounced, because he had a quarrel about cloth with the prosecutor. He pleads an *alibi* from 10th

1857.

June 25.

Case of  
KHOSLAUL  
KAREEGHUR  
and others.

1857.

June 22.

Case of  
KHOSAU  
KAREEGHUR  
and others.

Kartick to end of Poos. Prisoner's identity is, however, fully proved; and there is nothing to shew that owing to the nature of the *alibi* it was impossible for prisoner to have been present at the offence charged.

Prisoners Nos. 7 and 8, each call the same witnesses to prove an *alibi*, and these prisoners say they went together to sell cloth, to one Seemooddeen in *Gora Murdana*, and then to other *hâts*, and were absent before the occurrence charged, and did not return till long after it.

The evidence to this *alibi* does not shew that the prisoners could not by any reasonable conclusion have been present at the offence charged.

Prisoner No. 9, denies his name to be Bandub, but says that it is Suderooddeen, and urges that it is so entered in the account-books of all with whom he has dealings. But it is quite general in the Eastern districts for persons of the prisoner's class to have two names, one by which they are familiarly known, and called by those with whom they live and have to do; and another for strangers and other sects and classes. Further prisoner's identity is fully proved by the evidence for the prosecution. This prisoner says to the Magistrate that he went early in *Aghun* to Backergunge in Azeezoolah's boat to various fairs; and to the Sessions Judge that it was at the end of *Kartick*. The witnesses he calls contradict each other as to this point of the month also; nor do they prove that prisoner could not have been present at the commission of the offence charged.

As to the *legality of the sentence*, the Sessions Judge cites precedents of an analogous character, but not of a precisely similar character. On the other hand, the passage from Beau-fort relied on by the Counsel is not positive authority, nor does it go so far as Counsel pleads. But looking to the general principles of penal law, we think that punishment should be inflicted specifically, *for the offence proved*, irrespective of inducements or conditions dependent on contingent events; notwithstanding the precedents in Nizamut Adawlut Reports, Volume I. pages 226 and 305.

Considering therefore the nature of this outrage, the fact that the woman has never been restored, the prevalence of such outrages in the districts referred to, and (we have reason to fear,) the impunity of the perpetrators, from the systematic and effectual intimidation used by this class of people against those who prosecute and give evidence against them, we think an example should be made in this case. We therefore sentence the prisoners to fourteen years' imprisonment each in banishment in separate districts. (Vide Nizamut Adawlut Reports, Volume I. page 121, and Nizamut Adawlut Reports Volume V. page 147.)

This sentence will not bar a prosecution for murder or personal injury, if such facts can be hereafter proved against any or all the prisoners, or others.

1857.

June 22.

Case of  
KHOSAUL  
KAREEGHUR  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND OTHERS

*versus*

RATTAIE MANJEE (No. 29, APPELLANT,) PEETHOO MANJEE (No. 30,) SEETUN MANJEE (No. 31,) JUS-  
SAE MANJEE (No. 32,) BOOKA MANJEE (No. 34,  
APPELLANT,) MAYSA MANJEE (No. 35,) KURUN MAN-  
JEE (No. 36,) SACKAIL MANJEE (No. 37,) JOWNGA  
MANJEE (No. 38 APPELLANT,) KALDUS MANJEE  
(No. 39,) JUTHOO MANJEE (No. 40, APPELLANT,) KURMUN JOLAHA (No. 41,) AND KANHOO MANJEE  
(No. 42.)

Chota-  
Nagpore.

CRIME CHARGED.—1st count, illegally and riotously assembling with offensive weapons and plundering the houses of Lalloo Tellee, Hurdut Tellee, Dooloo Moodee and Moohoo Moodee, prosecutors, and Oodoo Moodee, and Doodram Moodee, witnesses of property to the amount of Rs. 1,048-6 in Jamdur village, pergunnah Khurruckdeah; 2nd count, plundering Karoo Naik, prosecutor, of thread and other property amounting to Rupees 350; 3rd count, prisoners Nos. 29 and 30, having in their possession a portion of the abovementioned plundered property, amounting to two annas, well knowing the same to have been plundered.

1857.

June 26.

Case of  
RATTAIE  
MANJEE and  
others.

CRIME ESTABLISHED.—1st count, illegally and riotously assembling with offensive weapons and plundering the houses of the prosecutors of Rupees 1,048-6 in the village of Jamdur, pergunnah Khurruckdeah; 2nd count, plundering Karoo Naik, prosecutor, of thread and other property amounting to Rupees 350.

One prisoner convicted.  
Two prisoners released, evidence being insufficient for conviction.  
Remarks on one appeal being forwarded for three cases totally distinct.

Committing Officer.—Mr. A. G. Wilson, Deputy Magistrate of Burhee.

Tried before Captain W. H. Oakes, Deputy Commissioner of Chota-Nagpore, on the 29th November, 1856.

Remarks by the Deputy Commissioner.—It appears that about 9 o'clock during the day of the 22nd May, 1856, a very large body of Santals and others, armed with axes, bows and

1857.

June 26.

Case of  
RATTAIE  
MANJEE and  
others.

arrows, came in a riotous manner to the village of Jamdur and having entered it, robbed the persons named in the 1st count, of different kinds of property to the value of Rupees 1,048-6. The prosecutor, Karoo Naik, a traveller, had halted at the village and was at the same time plundered of property, valued at Rupees 350. The plunderers remained for some hours collecting their booty and left the village in the afternoon.

On the part of the prosecution, all the prisoners have been clearly identified both before the Deputy Magistrate and also in this Court.

The jury find the prisoners guilty as charged.

In this verdict, I agree, as far as regards the two first counts. The four bundles of thread, I do not think capable of clear identification, as there is no mark by which it can be distinguished from other thread of a similar kind. The prisoners Nos. 29 to 32, 34 to 40 and 42, are each sentenced to seven years' imprisonment with hard labor in irons from this date. On prisoner No. 41, in this case and that of Koonjoo, Boodoo and Government decided this day, a consolidated sentence is passed of fourteen years' imprisonment with hard labor in irons. On prisoners Nos. 33 and 43 no sentence is at present passed as they are implicated in another case.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) One petition of appeal has been presented for three cases. The cases are, however, each quite distinct. The prisoners in one are not prisoners in any other. The three offences charged were committed at different times, and at different places. There should therefore have been three distinct petitions of appeal.

The grounds of appeal, however, are the same on the part of all the prisoners, viz. that the appellants were all at home, and never engaged in the plundering charged in any of the three cases.

We think that the evidence to the recognition of prisoner No. 29, supported by the finding of the property of the merchant Karoo Naik with him, is sufficient. But we do not think the evidence sufficient for the conviction of the other prisoners. It depends solely on recognition.

We proceed to review the evidence on that point. Lalloo Tellee, prosecutor, does not recognize the prisoners. Witness No. 1, Oodoo Moodee, after having given their names before the Deputy Magistrate, states at the Sessions that he does not know their names, and he cannot tell who struck him. Doodheeram, witness No. 2, at first says he did not know the prisoners because they ran off. He then states the names of all the appellants and of others of the prisoners as recognized by him. Deloo Roy, the 3rd witness names the appellants and others before the Deputy Magistrate; but could not do so at the Sessions, *because*

six months had passed Premchand, witness No. 4, only recognized No. 43. This he states both to the Deputy Magistrate and at the Sessions. Jadookoomar, witness No. 5, identified only prisoners Nos. 31 and 32 before the Deputy Magistrate, and could not recognize even these before the Sessions. Witness No. 6, Gunesh Tantee, stated to the Deputy Magistrate that he knew the names of some, and identified Nos. 31 and 42.

In the succeeding case (372 B) it will be seen that when one witness, Sunker Pona, is asked at the Sessions why after recognizing the two appellants in that case and five others, and naming them, he stated to the Deputy Commissioner he did not name or identify them, his reply is *totidem verbis* this, "*Saheb ke pas yeh kaha tha, ki Sonthal lok lootna aya tha. To ous men se, ye hazir moodalahum, yani, ye hoga, weh hoga, weh hoga, aysa kaha;*"—or, "I said to the Deputy Magistrate, the Sonthals came to plunder; thus I went on to say of the prisoners present, this man will or may be one; that will or may be one, that will or may be one." This is obviously far too vague evidence to trust to for recognition, or to justify conviction.

For the above considerations, we admit the appeal of prisoners Nos. 34, 38 and 40, and order their immediate release.

We observe that the Deputy Magistrate's proceedings seem to have been conducted with but little care or regularity, and the Deputy Commissioner's conviction to have been based on very insufficient grounds, and with inadequate judicial enquiry into the bearings and details of the case before him.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND OTHERS

*versus*

SHAM MANJEE (No. 22, APPELLANT,) BOODHA MANJEE (No. 23,) LAKHA MANJEE (No. 24,) SHEKHUR MANJEE (No. 25,) SOORJOO MANJEE (No. 26, APPELLANT,) AND JHURREE MANJEE (No. 27.)

CRIME CHARGED.—Illegally and riotously assembling with offensive weapons and plundering the houses of the prosecutors of property to the amount of Rs. 2,886-8-6 in mouzah Muldah Gadee Gowan, Pergunnah Khurruckdeah.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. A. G. Wilson, Deputy Magistrate of Burhee.

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Case of  
RATTAIE  
MANJEE and  
others.

Chota-Nagpore.

1857.

June 26.

Case of  
SHAM MANJEE and  
others.

Prisoners released. Remarks on testing of evidence to recognition.



1857.

June 26.

Case of  
SHAM MAN-  
JEE and  
others.

Tried before Captain W. H. Oakes, Deputy Commissioner of Chota-Nagpore, on the 27th November, 1856.

*Remarks by the Deputy Commissioner.*—A little after sunrise on the 24th May, 1856, a very large body of armed Sonthals and others, came in a riotous manner, to the village of Muldah and pillaged the place till nearly sunset, and among others plundered the prosecutors of property to the value of Rs. 2,886-8-6. The defendants who live a short distance off from the village of Muldah, were recognized among the party, and that they were engaged in the outrage, is positively deposed to on the part of the prosecution.

The jury find the prisoners guilty.

In this verdict, I agree, as the prisoners have been identified, both before the Deputy Magistrate of Burhee and also in this Court. I therefore sentence the prisoners each to be imprisoned for seven years with hard labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present : Messrs. G. Loch and H. V. Bayley.) Sham Manjee and Soorjoo Manjee appeal. The Court have perused the record and considering that the evidence against the appellants is insufficient for their conviction, direct that they be released.

The Court remark that the evidence of the prosecutors and of the witnesses for the prosecution taken by the Deputy Magistrate, as regards the identification of the prisoners, appears to have been taken very carelessly, and without any attempt on the part of that officer to *test* the truth of the statements made; for instance, as to the evidence of Jeetoo Roy, witness No. 1. This witness according to the record is made to repeat the names of eight persons as if he knew them familiarly by those names, whereas he subsequently states to the Deputy Commissioner, that he did not know them before. His identification of the prisoners amounts simply to this, "Sonthals plundered the village, the prisoners are Sonthals, and are accused of that offence, and therefore I saw them." This witness on being asked by the Deputy Commissioner how he identified the prisoners said "Jhuree had a *goomchee* in his ear, and the rest were youths." Now seeing that most of these youths state their ages to be 35, 40 and more, it must be admitted that the reason assigned by this witness for being able to recognize them is not very cogent. Azeem Joolaha witness No. 2, identifies all the prisoners, though he never saw them before the day of the pillage. The prosecutor Sookhun identifies seven prisoners before the Deputy Magistrate, but at the Sessions declares that he cannot recollect their faces, as so long a time (six months) had elapsed, since he saw them again. Shunkur Panday before the Deputy Magistrate identifies the prisoners as being engaged, in plundering the village, but before the Deputy Commissioner at the Sessions declares that he was unable to identify them, and had *not* done so before the

Deputy Magistrate. On being questioned on this point by the Deputy Commissioner he states "I did not identify them. I merely said, this may be, that may be." (*yeh hoga, weh hoga.*)

In cases such as this when the names of the accused are unknown to the witnesses, and their just conviction depends solely on their being fully identified by parties, who at the time of the occurrence, must have been in a state of mind not very capable of making clear observation either of particular acts or persons, it is necessary to use great care in testing the evidence to recognition. One simple and obvious method is to put the accused with other parties, and then to call upon the witnesses to point out the parties they recognized at the time, and ask what part the prisoners took. If the witness be able to reply to these enquiries properly, credit may be attached to his statement, when his testimony agrees with that of others, even should he, as the witnesses in this case appear to have done, be unable to identify the accused at a subsequent period, owing to the lapse of time, between the occurrence and trial; and then the witness's evidence before the Magistrate having been recorded in the presence of the prisoner, may be used against the accused.

But, in the present case, the statement of the prosecutors and witnesses appear to have been subjected to no proper test at all. The prisoners are standing before the witnesses, who are asked whether these men were concerned; they merely assent, and the names of the prisoners are recorded as identified parties. But such identification, not shewn by the record to be otherwise duly tested, is insufficient for conviction.

We acquit the prisoners and direct their immediate release.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Bhaugulpore.

GOVERNMENT AND JHAROO FOTEHDAR

*versus*

GOLAB KOEREE.

1857.

June 27.

Case of  
GOLAB  
KOEREE.

CRIME CHARGED.—1st count, murder of Ram Sen, deceased; son of the plaintiff Jharoo Fotehdar; 2nd count, assault on Ram Sen, deceased.

Committing Officer.—Mr. F. B. Drummond, Joint-Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 27th March, 1857.

Appeal rejected. Remarks on record of evidence of persons of tender age.

1857.

June 27.

Case of  
GOLAB  
KOEREE.

*Remarks by the Sessions Judge.*—The prosecutor's son, Ram Sen, about nine years of age, had been missing from midday of 15th March last, until as originally reported by the chowkeedar Phagoo (witness No. 6,) at the thannah on 16th idem, No. 1, his body was found in a *ruhur* field, stripped of all the ornaments he was in the habit of wearing, altogether valued at Rs. 36-8. Information appears to have been then forthcoming that about mid-day of the 15th, he had been playing in company with the within\* three little boys, a little older than him-

\*Mungooa Chokra, witness No. 1.  
Mohro ditto " " 2.  
Moujessa ditto " " 3.

self, when they commenced pilfering the prisoner's grain field in the open plain, at a distance from any village. The prisoner

coming up, the deceased's three companions scampered off, but the deceased falling, the prisoner caught him, and the last they saw of him was, the prisoner carrying him off towards the *ruhur* field, next the grain field in the direction of the prisoner's solitary dwelling. It was in this *ruhur* field that the body was

Kashee Dhanook, witness No. 4.  
Nuthoo Chamar, " " 5.

found. There are also two other passers-by who corroborate the deceased's play-fel-

lows' statements.

The mofussil inquest on the body found in the *ruhur* field shewed it to be in a state of decomposition, but from marks on the neck, deceased must have come to his death by

Phagoo Passban, witness No. 6.  
Doorga Munder, " " 8.  
Gopal Sahoo, " " 9.

foul means. Dr. Farncombe, witness No. 10, was of opinion that "strangulation was the cause of death from the turgescence of the face and the protrusion of the eyes and tongue;" but, strange to say, this was neither noticed by the mofussil inquest, or its attesting witnesses, which I can only attribute to the careless indifference with which these matters are usually viewed by the natives, unless carefully superintended at the time. It would be vain to look for any satisfactory explanation of so nice a matter at the distant date when\* brought before

No. 125, dated 28th April 1857. this Court, but as per annexed copy of my letter to the Magistrate, I have taken the only corrective step I have hitherto

\* From the Sessions Judge of Bhaugulpore to the Magistrate of that district, No. 125, dated the 28th April, 1857.

In the within trial before this Court, the police inquest 17th March 1857, No. 3, on the murdered boy Ram Sen, though describing death generally to have been caused by strangulation, was utterly wanting in the following particulars deposed

Jharoo Fotehdar  
versus  
Golab Koeree.

to by Dr. Farncombe, "and from the protrusion of the eyes and tongue, I think it is very likely that strangulation was the cause of death." Neither inquest or the attesting witnesses thereto, observe any thing of the

found practicable, and if duly attended to, nothing of the kind need occur in future.

The prisoner's defences before the police and Joint-Magistrate amount to nothing beyond simple denials. It was not until questioned by the Joint-Magistrate, that he attributed the accusation to animosity without in any way attempting to account for the occurrence. It was not until at the close of his defence before this Court, that he again thought of it, when he said it originated in abuse about four annas. His defence before this Court, rested on the plea that if he had committed the deed, he must have been seen by people in the neighbouring fields, whereas of the several witnesses called by him, Nos. 11 to 21, inclusive, Nos. 13 and 19, absent, not one can support such defence, though, Nos. 11, 12, 14 and 18, attempted to do so.

Tiloknath Jha of Nyachuq, zillah Bhaugulpore.  
Sohunlal of Dhurka, Monghyr.  
Ameer Ali of Beekunpore, zillah Bhaugulpore.  
Sheikh Unjeed Ali, Burhapoora, Bhaugulpore.

The jury unanimously convict the prisoner of the wilful murder of the deceased on strong

presumption.

The only evidence inculpatory of the prisoner is the deceased's having been last seen alive in his hands, carried off by him towards the *rukur* field, in which his body foully murdered was eventually found. No clue to the plundered ornaments has been forthcoming, and no other circumstance tells against the prisoner, that of his apprehension even being very common place. Under the weak defences set up, and all the circumstances of the case, I find no reason to distrust the prosecution. The deceased's play-fellows have certainly equivocated about giving immediate information of what had happened. Their real silence is best accounted for by the pilfering scrape they had got into, and of their being really unaware of what had happened to the deceased until the body was discovered. This stands corroborated by the decomposed state in which the body was found, prosecutor's and Phagoo's (witness No. 6) prior fruit-

kind. Such grave discrepancy ought to be cleared up at the time by the Magisterial authorities, as it is vain to expect it when brought up at a distant period before the Sessions Court.

It is the practice in other districts for a copy of the mofussil inquest to accompany the body, this copy is handed to the medical officer for his information, simultaneously with his examination of the body, and he countersigns it in acknowledgment of his having done so, when, it should be duly filed with the record. It will then of course remain with the medical officer to bring to your notice any important irregularities or omissions in the mofussil inquest, which may seem to call for emergent enquiry and in that case, of course timely enquiry will duly follow, and the matter be cleared up before it comes before the Sessions Court.

I would therefore suggest your duly instructing your subordinates and the medical officer on the subject.

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Case of  
GOLAB  
KORRE.

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GOLAB  
KORREE.

less search for the deceased, and Phagoo's original information at the thannah. Their testimony, in every other respect, seems natural, and truthful enough, and it is difficult to account for the death in any other manner. The prisoner is an able-bodied man, quite strong enough to have committed such an act silently and without detection in so lonely and concealed a place on such a helpless little victim, though the otherwise perfect state in which the body was found, offers some doubts as to whether it could probably have remained there uninjured by animals during nearly two days and nights, yet cases of extraordinary preservation, even in more exposed places than this one was, are not unfrequent. I concur in the verdict, and would sentence the prisoner to transportation for life beyond sea.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The Court, having perused the record, observe that the deceased was last seen alive in the prisoner's company, and the body was found the next day, stripped of ornaments and clothes, in the prisoner's *ruhur* field. The Court find no cause to doubt the credibility of the evidence for the prosecution, though three of the witnesses are boys from ten to twelve years old, who were with the deceased when he was seized. The prisoner's pleas of *alibi*, and enmity with the prosecutor, are not substantiated. We concur with the Sessions Judge in sentencing the prisoner to imprisonment for life, with labor and irons in transportation beyond sea.

The Court call the attention of the Sessions Judge and Magistrate to the provisions of Sections 14 and 15, Act II. 1855. Seeing that the persons entered as witnesses Nos. 1, 2 and 3, are of tender years, the *Magistrate* should have asked each of them whether he understood the nature of an oath, and recorded his answer. If they, or any of them, did not do so, the Magistrate should have proceeded in conformity with the Sections of the law above quoted, making an entry to that effect on the record. The *Sessions Judge*, instead of quoting the Circular Order of 24th September (that of 24th November, 1855, No. 23, is probably meant, as there is none of 24th September) and referring to the depositions of these witnesses taken before the Magistrate, should have satisfied himself that these persons were cognizant of the nature of an oath before he proceeded to take their evidence, and should have made a record of the fact, or he should have proceeded under Sections 14 and 15 of Act II. 1855, entering it upon the record that he had done so. The Court observe that the Circular Order of 24th November, 1855, to which it is supposed the Sessions Judge refers, merely rescinds the mode of procedure formerly in force regarding the manner of taking the evidence of witnesses of tender years, and points to Sections 14 to 17 of Act II. 1855, as setting forth the course to be adopted in future.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND TOMEEZUDDEEN

*versus*

MAHOMED KAMEL ALIAS KAEMOOLLAH (No. 1.) KO-MURUDDEEN (No. 2.) OJHEEUDDEN (No. 3.) WARESH (No. 4,\*) SHEIK SABET (No. 5.) SHEIK KHOSAL (No. 6.) LALMAHOMED (No. 7.) CHERAGALLY (No. 8,\*) SHEIK FELOO (No. 9,\*) SHEIK OSEEMUDDEEN (No. 10.) NYMUDDEEN-SICKDAR (No. 11,\*) AFFAZUDDEEN (No. 12,\*) CHAMAROO (No. 13,\*) MODHOO KHAN (No. 14,\*) MYZUDDEEN (No. 15,\*) AND KHAS MAHOMED (No. 16.)

Dacca.

CRIME CHARGED.—Riot attended with the wilful murder of Sufder Alee and Nusseeruddeen.

1857.

Committing Officer.—Mr. J. H. Ravenshaw, Officiating Joint-Magistrate of Furreedpore.

June 30.

Tried before Mr. J. E. S. Lillie, Sessions Judge of Dacca, on the 28th April, 1857.

Case of  
MAHOMED  
KAMEL and  
others.

*Remarks by the Sessions Judge.*—It is stated in the evidence\*

\* Wit. No. 1, Busseeruddeen, for the prosecution that an armed force headed by prisoners, Nos. 1 and 2, commenced to cut paddy in prosecutor's field; that prosecutor, Sufder Alee, Nusseeruddeen and other relations went to the spot to remonstrate; that

Prisoners convicted. Pleasin appeal overruled. Remarks on the proper course in regard to the sentencing certain prisoners; and on dying declarations.

Sufder Alee seizing a bundle of paddy was cut down by prisoner No. 1, with a *sen* or *dhao*; that he was also wounded by prisoner No. 2 with a *chhora* (a large knife); that the prisoners endeavouring to drag away Sufder, Nusseeruddeen went forward to prevent them, and was speared in the groin by prisoner No. 3; that Sufder Alee was then carried off by the prisoners; and that all the prisoners were recognised among the rioters.

Nusseeruddeen subsequently died from the effects of the wound, but his deposition was taken by the darogah. It has been proved† that that deposition was accurately recorded;

† Wit. No. 11, Fuckeer Shurreef, that deponent was sensible at the time he gave it; and that he was aware that he would not survive.

\* Acquitted by the lower Court.

1857.

June 30.

Case of  
MAHOMED  
KAMEL and  
others.

A head and parts of a body were found in a tank a few days afterwards; and witness No. 19,\* Sufder Aleé's wife, has identified the head as that of her husband from the fact of a tooth

\* Wit. No. 19, Alef Khatoon.

being missing.

Witness No. 14,† the medical officer, has proved that the wound in the groin was the cause of the death of Nuseeruddeen; and that the head of Sufder Aleé was separated from the trunk by the operation of sawing either before or after death.

† Wit. No. 14, Dr. B. N. Bose, M. D.

The prisoners affirm in their defence that no cause of enmity existed between them and the prosecutor's party. Prisoners Nos. 1 and 2, ascribe the charge to a quarrel regarding a *hath* they had taken. Prisoner No. 3, avers that the case has been got up by an indigo-planter. The prisoners plead *alibis*; but the evidence of their witnesses is weak and inconclusive.

In accordance with the *futwa* of the law officer I have acquitted prisoners Nos. 4, 8, 9, 11, 12, 13, 14 and 15. Prosecutor in his first deposition in the Mofussil did not name those prisoners, an omission which raises a reasonable doubt of their guilt.

The law officer convicts the remaining prisoners of culpable homicide, and declares some of them to be liable to *akoobut* and others to *tazeer*, *kissas* is barred in his opinion, because some degree of suspicion attaches to the evidence for the prosecution, and because the *lethal* weapons have not been produced.

In my opinion, the crime of wilful murder has been fully established. "If, without adequate provocation, a person strikes another with a deadly weapon likely to occasion death, although he had no previous malice against the party, yet he is to be presumed to have such malice at the moment from the circumstances, and he is guilty of murder."‡ In this case the

‡ Russell on Crimes, page 514. provocation was not adequate, and the weapons were deadly.

It has been proved that prisoner No. 1, struck the blow which caused the death of Sufdur Ali. The evidence of the witnesses on that point is corroborated by the dying declaration of Nuseeruddeen, and by the fact that the prosecutor deposed to that effect in his first evidence before the police.

It has been proved that the prisoner No. 3, inflicted the wound which caused the death of Nuseerooddeen. His dying declaration, which appears entirely veracious and trustworthy, is conclusive on that point. It is true that prosecutor in his evidence before the police averred that he could not distinguish who wounded Nuseerooddeen, and that in his subsequent depositions he averred that prisoner No. 3, did wound him; but there can be no doubt that his first statement is correct.

The witnesses for the prosecution have stated that prisoner No. 2, also wounded Sufdur Ali; but no reliance can be placed on that statement. Neither the dying declaration of Nuseer-uddeen nor the first evidence of prosecutor make any mention of that circumstance. It has been satisfactorily proved, however, that he was one of the leaders of this outrage.

It has been proved that prisoners Nos. 1, 2, 3, 5, 6, 7, 10 and 16, were actively engaged in the riot which was attended with this double murder. They were named by the prosecutor in his first evidence.

I would recommend that prisoners Nos. 1 and 3, be transported for life; that prisoner No. 2, be imprisoned for fourteen (14) years with labor in irons in banishment; and that the remaining prisoners be imprisoned for seven (7) years with labor in irons.

*Remarks by the Nizamut Adawlut.*—Present: Messrs. G. Loch and H. V. Bayley.) •The prisoners appeal. Nos. 1, 2, 5, 6, 7, 10 and 16, plead there was no riot, nor murder; that the charge has been brought against them by their enemies in the village; that they do not know and never saw Nusseeruddeen; that though Sufdur Alli's wife at first charged them with the murder of her husband, she, on enquiry, finding the charge to be false, withdrew her complaint; but neither the Magistrate nor Sessions Judge attended to this, and have unjustly convicted the appellants.

Wajjeooddeen, prisoner No. 3, appeals on the following grounds: 1st, that he has nothing to do with the parties or their cause of quarrel; and that his house is one *pahur* distant from the scene of the riot; 2nd, that he has been implicated by the collusion of McArthur's servants, with whom he is at feud, on account of indigo disputes; 3rd, that on the day in question appellant was at his own village, Jyepasa, where a meeting was held in Busarut Alli's house, at which many of the villagers and the servants of McArthur attended to settle disputes regarding indigo; 4th, that appellant was not present in the riot is clear from the written information of Tumeezooddeen, at the thannah, who mentioned the name of Wujjeooddeen of *Kardua*, whereas the appellant lives at *Jyepasa*.

We reject the appeal of the prisoners Nos. 1, 2, 5, 6, 7, 10 and 16, as the evidence against them is distinct and satisfactory, and no sufficient plea is advanced or substantiated in appeal, to render it necessary for us to interfere as to their conviction.

With regard to the pleas urged by the prisoner, Wujjeooddeen, it may be observed that this name does not appear in Tumeezooddeen's statement to the Darogah made on 4th December, the day after the riot; but in the deposition given by the wounded man Nusseerooddeen (since dead) to the Darogah on the 5th December, the appellant is distinctly charged with

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being the party, who wounded him; and in reply to a question put by the Darogah, the wounded man (since dead) distinctly states that he accused *Wujjeooddeen of Jyepasa*, and this statement is supported by the evidence of the witnesses Nos. 1, 2, 3 and 4. The evidence for the defence shews that the prisoner was, as pleaded by him, at Busarut Alli's house at Jyepasa on the day of the riot; that there was a meeting of the ryots with McArthur's amlah to settle disputes, and that no favorable conclusion was come to; but the prisoner has failed to shew satisfactorily to this Court that he has been falsely implicated in this case by Bhyrub Roy, a servant of McArthur, on account of his opposition to the terms of settlement proposed at the meeting in Busarut Alli's house. It is this Bhyrub Roy, whom he charges with having colluded with the Darogah, and induced that officer to include his name as a party engaged in the riot and murder. The appellant has further failed to shew what, if any, connection there is between the villagers of *Kardua* and *McArthur*, or whether their relation to each other is such that the villagers could without delay be influenced by the factory servants to give false evidence against a person with whom they had no cause of quarrel. The appellant had opportunity to examine the witnesses for the prosecution. A mokhtar was employed for the defence, and a few questions would have elicited the truth of the fact whether the appellant was or was not personally known to the witnesses. Considering all the circumstances we do not think the evidence for the defence is sufficient to outweigh that for the prosecution, more especially the deposition of Nusseeruddeen, whose statements are throughout supported by the testimony of the witnesses, and the correctness of which we have no grounds for calling in question. We therefore reject this appeal.

The Court do not perceive any grounds for mitigation in the case of prisoner No. 2; for the evidence for the prosecution shews no difference in his guilt; indeed he struck a second blow after prisoner No. 1 had struck the first. We therefore sentence the prisoners Nos. 1, 2 and 3 to be imprisoned for life, with labor and irons, in transportation beyond sea; and the other prisoners to seven years' imprisonment each, as recommended by the Sessions Judge, but in banishment.

The Sessions Judge in conformity with the spirit of Clause 2, Section 6, Regulation LIII. 1803, Clause 4, Section 6, Regulation IX. 1831 and Construction 484 should have passed sentence on the prisoners Nos. 5, 6, 7, 10. and 16, but have refrained from issuing the warrant till the orders of this Court regarding the other prisoners were received.

The Court also observe that the statement of Nusseeruddeen made to the darogah on 5th December cannot be considered a dying declaration under the meaning of Section 29, Act II. 1855;

for there is no proof that the deponent thought himself to be in danger of approaching death; and it is given on oath as an ordinary deposition.

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others.

PRESENT:

A. SCONCE, Esq., Judge.

GOVERNMENT AND MUSST. DHUNIA

versus

SURNAM KANDOO.

Shahabad.

CRIME CHARGED.—Highway robbery, with wounding the prosecutrix with intent to kill.

1857.

Committing Officer.—M<sup>r</sup>. W. C. Costley, Deputy Magistrate of Sasseeram.

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Tried before Mr. A. Littledale, Officiating Sessions Judge of Shahabad, on the 13th May, 1857.

Case of  
SURNAM  
KANDOO.

Remarks by the Officiating Sessions Judge.—The circumstances of the case are as follows.

Prisoner convicted. Remarks as to providing for preservation of testimony in cases of mortal sickness.

On the 10th March, 1857, about noon, Musst. Dhunia, of mouzah Teora, Pergunnah Rhotas, was brought in a *dooly* to the jemadar at choukee Akburpore, where she deposed that on the preceding day early in the morning, she was going along to mouzah Adla with some salt, tobacco, *goor*, &c. On arriving at a river about a mile from her village, the prisoner, Surnam Kandoo, who was sitting there, asked her for a pice worth of *goor*, she gave it to him and after tying it up in his cloth he said, "I will take your life to-day;" she replied, "Take my ornaments but do not kill me;" he then took away from her a *hunslee* and other silver ornaments, valued at 12 Rs. and with an iron knife, wounded her on the throat, cheek and lip: she seized hold of the knife and her fingers on both hands got cut. Shewnath Noniah coming up, the prisoner fled with the ornaments, and afterwards Goordial and Goburdhun chowkeedars arrived and saw what had happened. She said to the jemadar that she was not then in a condition to enable her to mention the names of any others.

On the same day she gave a similar deposition before the Deputy Magistrate of Sasseeram, mentioning Goburdhun chowkeedar, Shewnath and Debilal as her witnesses.

On the 13th, the jemadar reported the apprehension of the prisoner by Dhungain chowkeedar, who had seized him on the top of the Rhotas hill as he was running away.

On the same day he reported that the prisoner had made a confession and that he had pointed out where the ornaments

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would be found and that he (the jemadar) had discovered them at two paces, north of the place, where the highway robbery had been committed, under a stone in the sand. The answer of the prisoner, which was taken down on the 13th, was, that he had wounded the woman with a "*tangee*" (a carpenter's axe) and had taken her *hunslee* and another ornament called a "*hykul*," that on Shewnath Noniah and a chowkeedar coming and calling out he ran away, leaving the ornaments and the "*tangee*;" he said that he was put up to this by the Teora zamindars who told him they would prevent him from coming to any harm, he added that he was once imprisoned for six months for theft. On the 15th he made a similar confession before the Deputy Magistrate as to robbing and wounding the woman, accusing Choramun Singh of Teorah of directing him to do so in consequence of the woman having refused to supply him any longer with salt and tobacco.

On the 26th March the woman died in the hospital at Sas-seeram, a week after the commitment of the case to the Sessions. The evidence of Sobhan Alee, native doctor, witness No. 9, shows that her death was caused by dysentery from which she was suffering slightly on being first brought into the hospital; according to his statement, she appears to have received nine wounds on the forehead, cheeks, nose, and lips, a wound on the throat which was three inches in length.

Several wounds in the fingers of both hands, her face, throat and palms of her hands scratched.

None of the wounds were of a serious nature endangering life; the one on the throat was more severe than the others, and with the exception of that one, which was not quite healed, all had got well. Before this Court, Goburdhun Khurwos chowkeedar, witness No. 2, states that he saw the prisoner on the top of the woman cutting her throat with a *tangee*, and on seeing him and Shewnath, the prisoner fled into the jungle, the woman told them that she had been robbed and wounded by the prisoner, he says there was no handle to the "*tangee*" and that he distinctly saw him cutting the woman's throat with it.

Before the Deputy Magistrate this witness merely said that he saw the woman at the river, who, on being questioned, said that the prisoner had been killing her. On my asking this witness to account for the great difference in his statements before the two Courts, he says he was ill at the time of his giving evidence before the Deputy Magistrate and that his senses were not right.

On looking at the papers sent in from the thannah, I find his statement made on the 13th March before the jemadar agrees with that made before this Court.

Debilal, witness No. 3, states before, that on coming to the river

on his way from Adla to Teora he heard Shewnath and Goburdhun making a noise ; on which he ran and saw at a distance of a hundred paces the prisoner running away into the jungle, the woman said that she had been wounded by the prisoner who had been killing her and had carried off her ornaments. On being questioned whether Shewnath and Goburdhun had said any thing to him, he says that they called out that the prisoner was sitting upon the woman's chest and cutting her throat ; witness said he saw nothing in the prisoner's hands but the woman said he had wounded her with a knife. Biris Dandur (not Nubu as stated in the calendar) witness No. 4, states that he apprehended the prisoner, who told him he had wounded the woman.

Toolshee and Ajaeb witnesses Nos. 6 and 7, depose to the discovery of the property under the sand in presence of the prisoner, who said he had thrown it down and fled.

Ghurburun and Peryag witnesses Nos. 14 and 15, recognised the property as belonging to the woman. Peryag Pandey and Sogund Solar, witnesses Nos. 10 and 11, attest the confession in the mofussil as having been voluntarily made without any threats or inducements. Bhungunlal and Husan Bux, mookhtars, witnesses Nos. 12 and 13, give similar testimony as to the confession before the Deputy Magistrate.

On the 14th April, I postponed the case in consequence of the absence of Shisnath, the principle witness (No. 1,) who was reported as too ill to be sent in.

On the 7th May, the jemadar reported having been to see him and that he was so ill as to leave little hope of recovery, but that even if he should get over his illness there would be no chance of his being able to attend under three months. Under these circumstances, I have not thought fit to postpone the case any longer and I have this day taken the answer of the prisoner who states that in accordance with the directions of Chooramun, he on meeting with the woman in the road had beaten her well.

The *futwa* of the law officer convicts him of the crime with which he is charged.

Although none of the wounds, with the exception of the one on the throat appears to have been severe and though it is not clear whether they were inflicted with a knife, as stated by the woman, or with a "*tangee*" as stated by Goburdhun (witness No. 2,) the number of them shows that the prisoner must have been hacking away at her for some time, and it can only be presumed that he did so with the intent to kill her.

Considering the charge sufficiently proved by the evidence and his confessions throughout, I concur with the *futwa* of the law officer, and seeing no grounds for any mitigation of the prescribed punishment of transportation for life, I recommend that such sentence should be passed upon him.

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*Remarks by the Nizamut Adawlut.*—(Present: Mr. A. Sconce.) The prisoner is fully convicted of wounding Musst. Dhunia with intent to kill her, and of robbing her of her silver ornaments.

Throughout the whole proceedings the prisoner has admitted his guilt: first, before the police, next before the Deputy Magistrate, and lastly before the Sessions Judge. When called upon to plead to the charge, at his trial, he answered, "Yes, I wounded Musst. Dhunia and stole her property." And subsequently in offering his defence, he excused himself by saying that one Baboo Chooramun Singh had a grudge against Dhunia, because she would not sell him *goor* or tobacco on credit, and that at his instigation, he (the prisoner) had punished her well. Prisoner offered no witnesses.

Unhappily the prosecutrix died of dysentery before the trial, and a material witness was by illness prevented from attending, but the charge, independent of the prisoner's confession, is otherwise proved. The wounds inflicted on Musst. Dhunia are not of a fatal character, but from their position and number, the purpose of the prisoner to kill Dhunia is plainly to be inferred. The weapon used has not been found, but prisoner himself said he used a hatchet. One wound three inches long was inflicted on the woman's throat. On her face and forehead and hands were many cuts, and obviously only her struggles prevented the murderous purpose of the prisoner.

I sustain the conviction of the Sessions Judge, and as recommended by that officer, sentence the prisoner, Surnam Kandoo, to be imprisoned in transportation for the term of his life.

I do not find that any orders have been issued for the guidance of Magistrates to provide for the preservation of testimony, when a prosecutor, or even a material witness, may be seized with mortal sickness before the trial, for the successful prosecution of which, the evidence of the dying party may be indispensable, comes on.

It is not unusual to record, with the attestation of witnesses, the dying declaration of a murdered man, and this declaration so attested may be received as evidence against a prisoner on trial for the murder.

Possibly it may be expedient to instruct the Magistrates in any heinous trial when a prosecutor or a witness whose evidence is essential to the conviction of a prisoner charged with the commission of a heinous crime may be in imminent danger of dying, to solemnly record the deposition of the dying party, if possible in the presence of the accused and of attesting witnesses, and to submit it at the trial in the event of his death.

I beg to submit the matter for the consideration of my colleagues.

NOTE.—Copy sent to the English Department and Circular Order issued on the subject. See No. 18 dated 31st July, 1857.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND RAMISSUR SEIN

*versus*

DINOOBUNDOO BANERJEE (No. 12, APPELLANT,) BOY-  
ZONATH PATNEE (No. 13,) HARADHUN PATNEE  
(No. 14,) BHUGLA GAHEENEEDAR (No. 15,) BAZA-  
REE GAHEENEEDAR (No. 16,) HOOKMA GAHEE-  
NEEDAR (No. 17,) GROOPERSAUD GAHEENEEDAR  
(No. 18,) SHEIKH AUSMUTTOOLLAH (No. 19, AP-  
PELLANT,) RAMDOYAL HAZAREE (No. 20,) JUCKSOO  
HAZAREE (No. 21,) BASARUT SHEIKH (No. 22,) SHEIKH JEETUN (No. 23,) SHEIKH HAKIM (No. 24,) LALLCHAND SONAR (No. 25,\*) GHOTOO NADOF (No. 26, APPELLANT,) AND JEETUN SINGH (No. 27)

Dinagepore.

CRIME CHARGED.—1st count, dacoity in the house of Bindabun Sein, in which property to the value of Rs. 4,090-5 was stolen; 2nd count, knowingly receiving property acquired in the above dacoity.

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CRIME ESTABLISHED.—Nos. 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 26, of dacoity and Nos. 19 and 27 of knowingly receiving property acquired by the above dacoity.

Case of  
DINOBUN-  
DHOO  
BANERJEE  
and others.

Committing Officer.—Mr. A. J. Jackson, officiating Joint-Magistrate of Maldah.

Tried before Mr. James Grant, Sessions Judge of Dinagepore, on the 15th January, 1857.

Prisoners re-  
leased; the  
testimony of  
the witnesses  
being contra-  
dictory, and  
the proceed-  
ings of the po-  
lice, and the  
evidence to the  
finding of the  
property, un-  
satisfactory.

*Remarks by the Sessions Judge.*—This case was tried under Act XXIV. of 1843.

On the night of the 12th of April, 1856, some twenty dacoits attacked the house of the prosecutor, maltreated him and his uncle, an old man, and carried off property valued at Rs. 4,090. The prosecutor then stated that among the dacoits he had recognized Dinobundhoo Banerjee, No. 12, Ghotoo Nadof, No. 26, and two others "Gopee" and "Gunes," but the Kaleechuck darogah merely had their houses surrounded; until ordered to do so, did not search them; as he attributed the charge of dacoity to enmity of the prosecutor towards Dinobundhoo Banerjee No. 12, and alleged that there was nothing beyond the depositions of the prosecutor and his servant "Deepchand"

\* Acquitted by the lower Court.

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and others.

to show that a dacoity had occurred. The houses were not searched until the 18th of April, when no part of the plundered property was found and the search of the house of No. 12's father-in-law was postponed until the following day, when a silver "*pandhan*" top was discovered in an out-house concealed in a boat sail. The darogah presumed that it must have been put there by the prosecutor's man and that it was not a part of what had been actually plundered, and accordingly released the prisoners on security. On the 19th of May, Mr. Drummond, the Officiating Joint-Magistrate, obtained information respecting the plundered property from Mungloo chowkeedar, witness No. 1, and the mohurrir of the Bholahaut thannah was deputed to follow up the clue. Bazzonath Patnee, prisoner No. 13, was arrested, produced part of the plundered property and named several of his accomplices. In the foudjary eleven of the prisoners confessed and four of them did so before me. The prisoner Dinobundhoo, No. 12, was recognised from his voice by the prosecutor during the dacoity. Some plundered property, was found in his father-in-law's house during the first search, and also in his own house on the second search, and a stick left behind by the dacoits was identified as his. Plundered property was found in the house of Ausmatoollah No. 19, and near the house of Ghatoo Nudof No. 26, who was also recognized by the prosecutor, and in the house of No. 27, Jeetun Singh's mistress, which in the foudjary he stated had been given to her by him. From the confessions, it appears that the dacoity was got up by Trilochun Chuckerbutty, married to the niece of the prisoner, No. 12, an anlah in a farmer's cutcherry at Beerza, and Pulin Mitter, who attends there on the part of a minor Zemindar and that a great portion of the plunder was appropriated by them and the prisoner, No. 12, which appears probable as only some 1000 Rs. worth has been recovered out of 4,090. The men were got together in the first instance on the pretence of taking them to see a *Chokra-natch* at Seidpore *mela* in the neighbourhood. I see no reason to doubt the evidence for the prosecution generally or the confessions of the prisoners.

*Sentence passed by the lower Court.*—Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 26 and 27, imprisonment each for ten years and Nos. 21, 22, 23 and 24, for seven years.

*Remarks by the Nizamut Adawlat.*—(Present: Messrs. G. Loch and H. V. Bayley.) There are three separate appeals in this case. Dinobundoo prisoner No. 12, Counsel Baboo Banimadhub Banerjee; Ghatoo Nudof, prisoner No. 26, Counsel Moulvee Aftabooddeen; and Asinutoollah Chowdree, prisoner No. 19, who has no pleader.

It is to be premised that the date of the dacoity was the 12th April, 1856, or 1st Bysack, on which date was a great *mela*, at night, at the neighbouring village of Syedpore, and

that the darogah of thannah Kaliachuck investigated the case three days after, and reported that he could not discover the guilty parties. The next thing is a petition by one Mungloo, chowkeedar of Mahula Manik Chuck on the 13th May, 1856, (and his *izhar* of the 21st May,) to the effect that Gooool Hazaree, and Ameer Chand (chowkeedar of Peria) told him that Poolin Mitter, Jetoo Singh and Trilochun, amlah of the zemindar, and others, had not been at home on the night of the 1st Bysack, and had come back from the *mela*, bringing property with them; and that these two persons begged him, Mungloo, to petition the Magistrate on the subject. In the petition of Mungloo of the 13th May, the names of prisoners Nos. 12, 19 and 26, are *not* given; *nor* in his *izhar* of the 21st are prisoners Nos. 12, 19 and 26, specified, although Mungloo got his information from Ameer Chand, who mentioned to him prisoner No. 12. The statement of Gooool Hazaree is simply that Ameer Chand told him that the zemindaree amlah together with prisoner No. 12, but *not* Nos. 19 and 26, had offered him 8 Rs. and strongly urged him to report that they were at home on the night of the dacoity. The statement of Ameer Chand is to the same effect. He names prisoners Nos. 12 and 19 to the police, but not No. 26; he does the same to the Magistrate; and he died before the trial at the Sessions.

Independently of these discrepancies, and of the delay and manner in which the charge has been brought forward, after a previous fruitless search of the prisoner's premises by the local police officers, we distrust altogether the actual proceedings of the second search, and finding of property with the appellants. In the first place, no good reason is on record why a subordinate officer of the character of that of the jemadar of *pharee Bolahah*, should be selected for the enquiry, on the mere indication of that officer by the petition of the chowkeedar, Mungloo, who himself presented that petition on hearsay. But be that as it may, the evidence as to the discovery of the prosecutor's property with each appellant, and its identification as prosecutor's, is not to our mind satisfactory.

In the case of prisoner No. 12, some cash and a *nak-machee* were stated to be found. The cash is not identified as prosecutor's. The *nak-machee* is sworn to as prosecutor's on the one hand, and is claimed by prisoner, No. 12, as his own on the other. Witness No. 14, prosecutor's nephew, said he recognised, as prosecutor's, the property found with other prisoners, because he constantly saw prosecutor's property, but he did not recognise this *nak-machee*, No. 77. Witness No. 47, is contradictory as to the identification of this article, No. 77; and witness No. 48, speaks in rather general terms, and not by precise identification, of the specific article in question.

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DHOO  
BANERJEE  
and others.

In regard to prisoner No. 19, Asmutoolah Chowdry, the articles No. 71, ten *mutteahs*, and No. 72, a silver ring, are said to have been found with him. The witness No. 14 (the nephew of the prosecutor) did not recognise Nos. 71 and 72. The two witnesses, Nos. 6 and 16, state their calling to be *service*; but whether they are servants of the police or whose, does not appear; and the witness No. 8, gives evidence, which certainly does not shew that the articles Nos. 71 and 72, were *bonâ fide* found buried on prisoner's premises. Indeed we do not gather that there is any clear evidence in refutation of prisoner's plea that the articles were taken from prisoner's wife, and deposited where they were found by the police, and that their discovery was a merely fictitious one. The prisoner too has adduced some evidence to shew that article No. 71, was his wife's, and much to his own good character.

In the case of prisoner, No. 26, a silver *huka* No. 78, is the article on the identity of which as prosecutor's and its being found with this prisoner, No. 26, his guilt depends. He pleads that it was put on his premises without his knowledge. The witnesses to the finding this property are Nos. 1, 2, 3, and 43. The witness No. 1, is the chowkeedar, Mungloo, whom we consider an interested and an untrustworthy one. As to the witness No. 3, he says at the Sessions that the prosecutor did not go into the house when it was searched, because he was a Brahmin. But he is not one. The witness No. 43, says that the Moonshee ordered the sides of the house to be dug round; and it appears that at once the spade struck the right spot, and exposed this article No. 78.

Considering all the above evidence, and the whole proceedings of the police, we do not think the conviction of the appellants can be safely maintained, and we acquit the prisoners; and we order their immediate release.

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# SUMMARY CASES.

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JUNE.

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SUMMARY CASES.

JUNE, 1857.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 48 OF 1857.

SHAMACHURN GHOSE AND OTHERS, APPELLANTS,  
PETITIONERS

*versus*

NUSRUT KHAN ON BEHALF OF MR. ORAM,  
OPPOSITE PARTY.

Jessore.

CRIME CHARGED.—Plunder and wounding.

*Abstract grounds of appeal.*

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I. The Magistrate's order, upheld by the Sessions Judge, convicting the petitioners of attacking the factory, is in opposition to the facts proved and the assertion of Mr. Oram.

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II.—The Magistrate refused to examine the respectable and credible witnesses named by Mr. Oram.

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and others.

III.—The Sessions Judge upheld the sentence passed upon the petitioners without considering this fact and the assertion of the agent of the factory.

Remarks  
on misstate-  
ments by ca-  
keel; and on  
severity of sen-  
tence and cre-  
dibility of evi-  
dence not  
being points  
for summary  
special appeal.

IV.—The petitioner Hesabuddeen was at his own house at the time of the occurrence, and this has been sufficiently proved by the evidence of the Balagustee jemadar of the factory, Juggunnath Oopadhya, and the mohurrir Kylash Chunder Ghose.

V.—The Magistrate's sentence (upheld by the Sessions Judge) on the petitioner Besarut Khan, on the ground that he was wounded while amongst the attacking party, is quite contrary to the fact, as he was not wounded by the factory agent, but was so when resisting the attack made by the factory people on the house of Bannee Chunder Bose.

JUDGMENT :

The appellants, it is urged by the Counsel, Srinath Doss, are charged with attempting to attack the Muthoorpore factory, while there is no evidence to prove that they were present, the prosecutor admitting that after he had driven away the attacking party, the appellants joined the *lattials*. Counsel proceeds: 1st. "There is no evidence of the appellants having

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and others.

joined the *lattials*. Of six witnesses named by the prosecutor in his first information to the Magistrate only one appeared to give his evidence. Other five were called by the prosecutor, and of these witnesses three do not mention the names of the appellants, and the evidence of the other three who did mention their names is rejected by the Judge, as unworthy of credit, and he has confirmed the sentence against the appellants on other grounds."

2nd. "The Sessions Judge has released two of the prisoners on grounds which are equally applicable to the appellants."

3rd. "The punishment awarded is too severe."

The first objection relates only to the credibility of evidence, but we do not find, (*as incorrectly stated by the vakeel*.) that the Sessions Judge rejected the evidence of the three witnesses and convicted the appellants on other grounds. The remark of the Sessions Judge is that though it may be questionable whether they (appellants) went *up to* the factory, it is clearly proved that they joined the *lattials* when they re-assembled at the place where the Magistrate's tent had been pitched, and that they gave orders for the seizure of the Saheb.

With regard to the second plea the Counsel has again misstated the case. The Sessions Judge has released two prisoners, because though named in the petitions filed by other parties, they were not named in Mr. Oram's first information. This reason does not apply to the appellants whom the Counsel admits were named from the first.

The third plea is not one which the Court can admit in a summary special appeal.

The Counsel must know or ought to know that only legal points on facts opposed to the record, and not the credibility of the evidence can be pleaded in summary special appeal as grounds for such appeal.

We reject the petition.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 53 of 1857.

OOMAKUNT ROY, APPELLANT, PETITIONER

*versus*

HURINARAIN HAJRA AND OTHERS, RESPONDENTS,  
OPPOSITE PARTY.

East Burd-  
wan.

CRIME CHARGED.—Distrain of Ryotee property.

*Abstract grounds of appeal.*

1857.

1st. The petitioner being under the necessity of distraining his defaulting ryot's property under Regulation V. 1812, applied to the police darogah for the assistance of a police peon under Section 27, Regulation XX. 1817. His application was rejected on the plea that no certificate from the Ferosh Ameen, required from him, was furnished. On his petitioning the Deputy Magistrate he also rejected his petition, and the order for such rejection (confirmed by the Sessions Judge) is contrary to the rule of practice.

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2nd. The grounds stated by the Sessions Judge that no notice was served to the defaulting ryot, nor any application made to the Ferosh Ameen, nor the darogah furnished with a list of the distrainable property, are contrary to the facts. Petitioner prays, that the orders of the lower Courts be reversed, and the darogah ordered to render him such assistance as may be required with a view to preserve the peace.

Appeal inad-  
missible in a  
judicial pro-  
ceeding other  
than a crimi-  
nal trial, rela-  
tive to aid of  
Police in a  
case connected  
with distrain.

JUDGMENT:

The pleader cites Regulation IX. 1793, Section 72, as enabling this Court to hear the appeal.

That law refers to general supervision and suggestions for legislation in connection with police and other matters.

This case is one of appeal against the order of the Sessions Judge rejecting one appeal, *in a judicial proceeding other than a criminal trial.*

That judicial proceeding referred to the question of whether the petitioner should have the assistance of the police in an alleged distrain or not?

Under Section 2, Act XXXI. of 1841, the precedent of Dalrymple's case 16th September, 1851 (Full Bench) and our decision of the 18th ultimo in Rajchunder Doss's case, we cannot allow the appeal.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

*Trial No. 1.*

GOVERNMENT

*versus*

MORARI DOSS ALIAS KOMUL GHOSE ALIAS MOOK-  
TARAM ROY ALIAS MOHUN ROY (No. 2,) HURI  
DOSS BOIRAGHY (No. 3), MOHESCHUNDER BOSE  
(No. 4,) BUNGSHIBUDDUN DEY ALIAS BISSONATH  
GHUTUCK (No. 5,) AND BUDDUNCHUNDER MIT-  
TER (No. 6.)

*Trial No. 2.*

GOVERNMENT AND MODUN MOHUN KOOND00

*versus*

MORARI DOSS ALIAS KOMUL GHOSE ALIAS MOOK-  
TARAM ROY ALIAS MOHUN ROY (No. 2,) HURI  
DOSS BOIRAGHY (No. 3,) MOHESCHUNDRR BOSE  
(No. 4,) BUNGSHIBUDDUN DEY ALIAS BISSONATH  
GHUTUCK (No. 5,) AND BUDDUNCHUNDER MIT-  
TER (No. 6.)

*Trial No. 3.*

GOVERNMENT AND SORUSSUTTEE BEWA

*versus*

Jessore.

MOHESH BOSE ALIAS MADHUB KAISTO (No. 4.)

1857.

CRIME CHARGED.—Trial No. 1, 1st count, going forth in a  
gang for the purpose of committing dacoity on the 10th of  
August, 1856, corresponding with 27th Srawun 1263 B. S. ; 2nd  
count, going forth in a gang for the purpose of committing theft  
or burglary.

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Sessions judge  
requested to  
re-try the case  
and re-submit  
his proceed-  
ings, the con-  
viction being  
irregular. Pre-  
cedent and  
C. O. cited.

*Trial No. 2.*—1st count, theft of a boat and property valued  
at Rs. 8-5-9 belonging to the prosecutor Mudun Kondoo on the  
night of the 9th of August, 1856, corresponding with the 26th  
of Srawun 1263 B. S. ; 2nd count, knowingly having in their  
possession the stolen property.

*Trial No. 3.*—1st count, burglary in the house of the prose-  
cutrix Sorussuttee Bewa and theft of property valued at Rs.  
182-6 on the 25th of July, 1856, corresponding with the 11th of  
Srawun 1263 B. S. ; 2nd count, having had in their possession  
knowingly a portion of the property acquired by the above theft  
and burglary.

CRIME ESTABLISHED.—Trial No. 1, going forth in a gang for the purpose of committing a robbery.

*Trial No. 2.*—Having the boat in question in their possession, knowing it to be stolen.

*Trial No. 3.*—Theft, and having had in his possession a part of the stolen property knowing it to be stolen.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore on the 5th March, 1857.

*Remarks by the Officiating Sessions Judge.—Trial No. 1.* Some light is thrown on this case by a subsequent one in which these five prisoners are charged with the theft of the very boat on which they were apprehended, but as their detection and capture with arms and under suspicious circumstances are prior in time and more important in the eye of the law, it was necessary to try them on the present charges first. The principal witness in the present case is Sumbhoo Chunder Biswas, who states that he was going along the Bairub river on the 26th or 27th Srawun last, to the Madhipore factory, of which he is Amin; that about one o'clock in the day he saw a boat attached to the bank and about seven men cooking and eating their dinner in a date-garden; that after going to his house, and at about 2-30 in the day, he again saw the boat opposite to where he had seen it the first time and recognising Huri Doss No. 3, amongst the men in the boat, the said Huri Doss having been summoned to answer for himself in a case of dacoity, he thought the whole thing so suspicious, that he went to the factory, and informed the Dewan Purasnath Ghose, who directed him to apprehend the men in the boat in question; that on this he took with him Newaz Mahomed, Shirabdi chowkeedar, Kutub Ulla and another, for this purpose; that on Kutub Ulla's asking what boat it was, three men rushed out of the boat and ran away, one of whom Morari Doss (No. 2,) was apprehended by Kutub Ulla; while the other two got clear off; that the remainder of the prisoners were thus apprehended inside the boat where they were sitting or sleeping; that on searching the boat, some bamboos, a spear, some jars of oil, an axe and *dao*, some brass utensils, a tin box, a *sind katee* and a hog's tusk with some few plantains and other trifling property were found, and that the mohurrir of the Singed thannah, who was in the vicinity enquiring into a case where a boat had been sunk, was at once sent for and the whole of the prisoners made over to him. The above witness gave his evidence very clearly, without any *animus* against any one, and his story which is probable in itself is corroborated in all essentials by the evidence of the captors or witnesses to the capture abovementioned. These men state severally that they had their suspicions as to the nature of the business on

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1857.      which the prisoners were engaged, the place where the boat was,  
 June 22.      not being a regular landing-place, but a spot on the bank where  
                  corpses were either burnt or thrown into the water; that the  
 Case of      answer of the prisoners to a question put them before apprehen-  
 MORARI DOSS      sion to the effect that "they were traders," did not appear sa-  
 and others.      tisfactory; that all were apprehended inside the boat, with the  
                  exception of Morari Doss who bolted out with two others,  
                  names and persons unknown, and that arms and suspicious pro-  
                  perty were found in the boat.

It further appears that the prisoner Morari has been in jail previously for an affray, under sentence for seven years, where he was known by the name of Komul Ghose and he is charged with having two aliases besides. Two witnesses, Ramkrisore and Manik Mundul, prove that the prisoner No. 5, Bungshi Budun, is also known as Bissonath Ghutuck, the latter being his real name. Witnesses summoned by the Magistrate depose to the effect that prisoner No. 2, is a Boshtum and that he has made the daughter of one Krishna Moni a Boshtumi; that he has no ostensible means of livelihood, and is a suspicious character. Witnesses summoned to prove the same with regard to prisoners Nos. 4, 5 and 6, prove little more than suspicion against them arising out of the present case, though they do not see Nos. 4 and 5 to be possessed of ostensible means. The evidence to previous bad character, therefore, I consider to have failed on the part of the prosecution, against these three men.

The prisoners having all been captured under suspicious circumstances, have obviously a strong interest in explaining their conduct and position, and to this end, they all give the same explanation. It is to the effect that Nos. 2, 3 and 4, are partners in the boat and trade together. Prisoners Nos. 5 and 6, were unknown to them before the day of the capture when, owing to the heavy rain, as they were passing along the bank, they (Nos. 5 and 6,) asked permission to shelter themselves in the boat, which was granted; that they were all captured together by the people of the factory, and that Nos. 5 and 6, *who ought to have been witnesses*, were made prisoners to give colour to, and to complete the case. Morari Doss (No. 2,) says that he had gone to the village to buy something, and that he was caught on his return. They deny the assertion that there were two other men in the boat, who ran away and were not caught. They account for their capture by saying that Pureshnath Ghose who gave the order for it, has, or had an intrigue with the woman whom prisoner No. 2, has made a Bushtomi of; and that it is to spite him, that they were all apprehended. A long explanation is given by the first three prisoners as to how and where they had spent the week previous to their capture. They say that they were trading at various large bazars on the bank of the Bhairub river, and buying oil and other things for a whole

week previously, prisoners Nos. 2 and 3, agree remarkably as to dates and places. They were at Basunti bazar on the Tuesday, at Abharnuggur bazar on the Thursday, at Toltalla bazar on the Saturday, and were captured on the Sunday. Prisoner No. 2, bought 12 rupees worth of oil at Basunti bazar where he joined them, from a *Mohajun's* boat there, name unknown. His money is the produce of his professions viz. begging. The axe and *dao* he claims as his own. The suspicious weapons, the prisoners deny all knowledge of, as also of the tin box which they assert was brought from the factory and put into the boat by the witnesses against them. In the explanation of Mohesh Bose, No. 4, there is a discrepancy as compared with the explanation by the other two. Morari Doss said that he joined the boat at *Basunti* and bought twelve rupees worth of oil *there*. Huri Doss corroborates him; Mohesh says that Morari never joined them till they came to the Makadhi and bought *rice* there. The oil was bought at *Basunti* by himself, *Mohesh*, with his own money. He added, to explain part of the discrepancy, that though they had seen Morari at Basunti, he only actually got in at Makadhi. The witnesses to character summoned for the defence know nothing favorable or know nothing at all, regarding the previous life of prisoners Nos. 2 and 3. Those for No. 4 had little or no suspicion till the present case. Those for No. 5 had no suspicion at all, and admit prisoner to possess a *jumma* sufficient to support him. Those for No. 6 speak to his having a *jumma* but no plough and have no good opinion of him.

No overt act being proved against the prisoners and no particular spot being even hinted at as the scene of their future operations, the case against them rests entirely on the evidence of the men who apprehended them. That evidence is clear and consistent, and I see no reason to doubt or suspect it. The explanation of the prisoners is inconsistent, improbable and unsupported by any thing else whatever. No previous enmity against the prisoners is shown to exist in any of the witnesses, and is only alleged by Morari Doss as against himself from the dewan. It is unlikely that, if Morari Doss knew the dewan of a factory to have a spite against him, he should go and bring to within hail of that factory. It is unlikely that two men, who declare themselves respectable characters, should go and take shelter from the rain, at an odd place, in a boat, the owners of which they know nothing of whatever, when there were other means of shelter not far off. It is unlikely that if the factory-people acting under the dewan had a spite against Morari, they should set out to apprehend him at the very moment when, by his own account, he was not in the boat, but had gone on shore making purchases and it is unlikely that the witnesses should all conspire to ruin two innocent men mere

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passers-by for the sake of pleasing the dewan, who is vaguely alleged to have had an intrigue with the woman made a Bus-tumi only by No. 2.

These suppositions are most improbable, and taken with the proof against the prisoners afforded by the other case, in which the boat is proved to have been stolen by some parties on the night before the capture of the prisoners with that boat in their possession, and is recognised as belonging to a respectable man, Mudun Koondoo, the prosecutor in that case, the whole of this evidence leaves no doubt in my mind that the prisoners were all leagued together for the purpose of committing some unlawful act. I have considered that part of the case, where the evidence for the prosecution, as to the previous bad character of prisoners Nos. 5 and 6, partly breaks down, and I have given what weight I could to the evidence of the witnesses called by No. 5, to exculpate himself. But this amounts to nothing more than that the men in question were believed good characters until they were in a position to be proved otherwise. The evidence of the witnesses for the prosecution, if conclusive against one man, is conclusive against all five, as found at the same time and place and under the same circumstances, and I can make no difference between them. The account of the prisoners, which tends to exculpate *two* of the number, is unsupported, and I believe got up with a view to shelter *all* and to throw discredit on the prosecution.

I convict them under Regulation LIII. of 1803, of going forth in a gang for the purpose of committing robbery, and sentence them, with the exception of Mohesh, in this and the other case combined, to be imprisoned for five years, with hard labor in irons.

The sentence on Mohesh is reserved for the consideration of another case No. 3, in which he alone is concerned.

*Trial No. 2.*—The prosecutor in this case states that one night in Srawun last, he went to sleep in his own house, his boat being firmly tied to his own ghat, and that when he awoke in the morning, having heard nothing during the night, his boat was gone, that he called the neighbours and told them of his loss; that he was going to inform the police, when he heard that a boat had been found and men captured on it, and that on this he went and recognised his own property. The theft took place at night and the boat was found the *very next morning*. His purchase, possession, and loss of a boat, as well as his ownership of the boat in question, are clearly proved by Ruttun Koondoo and Jonardhun Koondoo. The capture of the boat, under the circumstances described in the preceding Sessions case, are proved by the same witnesses as appeared in that case. The prisoners make a defence tallying with their defence in the previous case. But even here they are inconsistent. Morari

Doss says he went shares with Mohesh and Huri, who told him they had got the boat on hire, from the prosecutor Mudun Koondoo. Huri Doss says that Mohesh Bose, and not he himself got it. Mohesh, that he and Huri got it, thus flatly contradicting his comrade. None of the prisoners make the least attempt to prove the fact of hire. Had they asserted the boat to be their own, there might have been some difficulty in proving it to be the prosecutor's; the boat in question having been sold before the Sessions came on. But having admitted the boat to be the prosecutor's, and not attempting to substantiate the fact of hire, the case is clear against them. Prisoners Nos. 5 and 6, excuse themselves in the same way as they did in the preceding case, viz. that they have no connection with the prisoners Nos. 2, 3 and 4, which assertion those prisoners admit. But the reasons adduced in my judgment of the first case, apply here also. The evidence, good against any of the prisoners, is good against the whole number. The witnesses to the previous good character of No. 5, have been duly considered, but they cannot exculpate him against the positive evidence of the prosecution. I convict all five prisoners on the second count of having the boat in question in their possession, knowing it to be stolen, and I sentence them, with the exception of Mohesh, in this and in the preceding case united to the punishment of five years' imprisonment with labor in irons.

The sentence on Mohesh is reserved for consideration with another case No. 3, in which he alone is concerned.

*Trial No. 3.*—The prisoner in this case is the man Mohesh Bose, prisoner No. 4, in the two previous cases. The theft took place in the district of the 24-Pergunnahs and the prisoners tried in this Court under the authority conveyed in the letter from the register of the Sudder Court dated 28th November 1856, No. 1014. The prosecutrix Sorussuttee Bewa, states that towards the close of the month of Asarh last (June) the prisoner and another man calling themselves Madhub and Govindo, came to her at Kalighat, and lodged in her house, agreeing to pay rent to her as lodgers, and stating that they had come to Allipore from Naraile in the district of Jessore, as they had a petition to present to the Superintendent or Commissioner or some such authority. They remained with her about twelve days, when one night about Srawun the 11th (July 25th,) she was awoken by her late husband's second wife, who lives with her; this person declaring she had heard a noise. She got up, found her boxes broken open, property taken out of it, not much, under 300 rupees, and the lodgers gone. She at once called the neighbours and made them acquainted with her loss. Her property consisted of money and women's ornaments, capable of identification. Her statement is corroborated in every particular by the evidence of witnesses. Amongst

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these witnesses is a man named Kishto Puramanick (No. 8,) (barber) who lives in the district of Jessore, near Khoolnea, but who had gone to Kalighat with a band of musicians. By the merest chance the two lodgers in the woman's house had come to him to be shaved during their sojourn at Kalighat whereon he recognised them as men from his own part of the country. The name of one being Peari Dass, the name of the other he did not know, though he knew his face. Peari Dass is not committed, nor has he been caught, but he is the man who went by the name of Govindo, as far as can be made out, the prisoner Mohesh, going by the name of Madhub. The witness Kisto, hearing that the lodgers had absconded and that no one knew where they had gone, and having had some doubts about the two men previously, immediately went to the prosecutrix, and said that he knew where her late lodgers resided, and that he would take the police there. Accordingly the jemadar of the Kalighat thannah, and a burkundaz started with the witness Kisto in a boat, went to the village where the prisoner resides, and after enquiries from the wife of Mohesh and from the mistress of his brother Huro Chunder, a woman named Alokmoni, found a considerable portion of the missing property hid near some plantain trees. The trees in question are near the house of prisoner's brother, not near his own. The witness Alokmoni, who has been admitted to give evidence in this case, after having been put in her defence before the Deputy Magistrate and then released, states that the prisoner Mohesh came home one night with a bundle and called at her house for a *lotah* and water, and having got them went into the garden for a particular purpose, taking the bundle with him: and that when the police came, she indicated the spot in question, as one likely to conceal the property they were in search of and the property was there found. It was after making enquiries of the wife of Mohesh, who is quite young, twelve or thirteen years old, that the police turned to Alokmoni whose house is at some little distance. Alokmoni is about thirty-five years of age, and gives her evidence fairly, though with some reluctance. No one but Mohesh came near her on the night in question and she was aware that he had been for some time previous absent from home. The finding of the property is proved by the evidence of the police, and it is satisfactorily recognised by the prosecutrix and her witnesses. Indeed, the ornaments, though such as are often worn by women, are silver of some value, and perfectly capable of identification, consisting of braceleta, armlets, ring for the nose, worked silver chain worn round the waist, &c.

The prisoner, though not found by the police at the time, was shortly after apprehended with a gang of others in this district under very suspicious circumstances, and committed to

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take his trial in two cases in which he has already been found guilty. My remarks on the trials are to be found appended thereto. The prisoner in his defence, denies all knowledge of the prosecutrix and her witnesses, he denies that he was ever at or near Kadighat at the time stated, and he knows nothing of the property to which the clue was furnished by Alokmoni. He says that the witness Kisto has an intrigue with Alokmoni, who lives with his, the prisoner's brother, Huro Chunder, and has done all this to ruin him. I consider his defences to be worthless and both charges to be clearly proved against him. The recognition of him by the witnesses is complete and beyond suspicion. Several of them saw him constantly for the ten or twelve days in which he lodged with the prosecutrix, and they speak with confidence to his identity. The case is brought home to him by the finding of the property, at a distance of three days' journey, on the evidence of Alokmoni which, though it be the only link in this part of the chain, I see no reason to doubt. To account for its being placed there, under any other circumstances, it would be necessary to suppose that the witness Kisto Puramanik had, on the bare hearing of a robbery in the house of the prosecutrix, voluntarily gone to the police and taken a long journey with them in order to ruin a man whose actual name he was then ignorant of, and that with the connivance of the police, he persuaded the witness Alokmoni to indicate a place as that in which the stolen property was concealed, and that place not the house of the prisoner, but a garden near her own house. It is impossible to attempt to account for the finding of the jewels where they were found except by the above supposition or by the supposition that the evidence of the prosecutrix and the witnesses is worthy of entire credit. I adhere to the latter view of the case and convict the prisoner of the theft, and of having had in his possession a part of the stolen property knowing it to be stolen. The conduct of the witness Kisto Puramanik is very creditable. The prisoner I have little doubt, has been for some time addicted to evil courses, I sentence him in this case, and in the other cases, trials Nos. 1 and 2, to imprisonment with hard labor in irons for ten years.

The witness Kisto, marked in the calendar of the Magistrate as No. 8, should have been marked as No. 6, *before* the jemadar and burkundaz, for the evidence of these two would be unintelligible until that of Kisto had been taken and heard.

*Resolution by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley,) No. 494, dated the 22nd June, 1857.

The Court observe with reference to the 1st case, Government *versus* Morari Doss *alias* Komul Ghose *alias* Mooktaram Roy *alias* Mohun Roy: and others, Nos. 2 to 6, that the charge on the 1st count is, "going forth in a gang for the purpose of

1857. committing dacoity," and in the 2nd, "with going forth in a gang for the purpose of committing theft or burglary." The officiating Sessions Judge *convicts specifically under Regulation*
- June 22. *LIII.* 1808. That law is in these words; "any person or persons who shall in the day or in the night go forth with any offensive weapon or in any gang with or without any offensive weapon, with the criminal intent of committing robbery and shall by force or intimidation rob or attempt to rob any person or persons." The law requires therefore the conviction to be based on proof, not only of the going forth and the criminal intent, but *also* of the robbery or attempt to rob. No such proof is given in this case, nor is the charge framed in the terms of the law. The conviction as it stands, is therefore illegal. The Officiating Sessions Judge might, irrespective of the specific law, have called for a *futwa* under Mahomedan law as to the criminality of going forth with intent to commit dacoity or theft, or burglary; and if that *futwa* had been to the effect that such was of itself an offence by Mahomedan law, and the offence had been proved against the prisoners, their conviction and punishment, would have been correct. (Vide Nizamut Adawlut Reps. 1845, Vol. VI page 52, case of Sungram Mundul and others, and Circular Order, 9th March, 1852, No. 80, Carrau's edition, page 469, as showing that *futwas* in analogous cases can be taken and acted on.) Referring to the procedure in that precedent, and to the fact that irrespective of this case, the next case of Modun Mohun Koondoo, would be one of theft of property under ten rupees only, ordinarily punishable by the Magistrate, the Court consider it will be proper and necessary that the first case, Government *versus* Morari Doss *alias* Komul Ghose *alias* Mooktaram Roy *alias* Mohun Roy and others, Nos. 2 to 6, be retried *de novo*, with the aid of a Law Officer or a Jury, and that the Officiating Sessions Judge re-submit his proceedings,
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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 58 OF 1857.

BERUM SINGH AND BESUN SINGH, PETITIONERS

*versus*

HULKHOREE AND ANOTHER, OPPOSITE PARTY.

Bhaugulpore.

CRIME CHARGED — Possessing stolen property.

1857.

*Abstract grounds of petition for review.*

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I.—It is stated in the decision of this Court of which review is asked that there might be some particular reasons why the police jemadar who investigated this case did not give his deposition on oath, but this has not been proved.

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BERUM SINGH  
and another.

II.—It is evident by the attested copy of deposition given by the jemadar that he has not given his depositions on oath but merely deposed on being questioned by the Magistrate. Hence such a deposition of the jemadar is not legal.

Appeal rejected;  
the neglect of Police  
not affecting  
the conviction,  
where essentially  
Reg. II.  
1832 has been  
observed.

III.—When this action was previously before the Court, petitioner had not the copy of deposition given by the aforesaid jemadar, and consequently could not file it in the Court. It is now filed.

JUDGMENT.

Application for a review of the Court's order of 18th May, 1857, in this case is made on the ground that the information given by the jemadar to the police darogah on which the investigation and search of the prisoner's appellants houses, took place was given *without oath*, and consequently the darogah's proceedings are illegal *ab initio*; and the conviction must under the precedent of Mooreeram's case, (vide Nizamut Adawlut Reports, volume VI. p. 35,) be quashed.

We observe that the proceedings in the case quoted were quashed, because the prosecutor had not, as prescribed by Regulation II. 1832, presented a petition requiring the charge to be investigated, and no orders for enquiry had been issued by the Magistrate. In the present case, we find that the enquiry was based upon a verbal order sent by the Magistrate to the darogah through the jemadar, on whose information the enquiry was made. The darogah took his "*izhar*," but there is no mention of any oath having been administered to, the informant. The omission was on the part of the darogah, and did not arise apparently from any unwillingness on the part of the jemadar to give information on oath. The darogah is liable to punishment for acting contrary to the law, but we do not



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think *his* neglect should vitiate the whole proceedings, or that the prisoners, who have been duly convicted, should be allowed to escape on an alleged illegality arising from the want of care of the police officer. The case quoted by Counsel is not analogous to this. In it the prosecutor was himself to blame, as well as the police. In the present case the darogah was alone to blame. The enquiry, however, in this case was made by orders of the Magistrate. These orders should have been written, and not sent verbally, but the essential intent of Regn. II. of 1832, is, that when the Magistrate orders it, the enquiry shall proceed. We reject the petition.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND MR. T. BRAE

Dacca.

*versus*

COLLYKANT SEIN.

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Case of  
COLLYKANT  
SEIN.

Remarks  
on reference  
where there is  
a difference of  
opinion on le-  
gality of con-  
viction, not of  
guilt.

Where Ses-  
sions Judge  
and Law  
officer agree  
as to guilt,  
and Sessions  
Judge doubts  
whether he  
can legally  
convict, he  
is not to refer,  
but to pass  
order, leaving  
parties to ap-  
peal if they  
wish.

CRIME CHARGED.—1st count, embezzlement of Co.'s Rs. 173 in the months of September and December, 1854, being money entrusted to him in his capacity as *naib* to pay current expences as well as the rent to the zemindars under whom his master held tenures; 2nd count, theft of the above; 3rd count, embezzlement of Co.'s Rs. 227-8, in the month of August, 1855, being money entrusted to defendant in his capacity as *naib* to pay current expences and rent to zemindars under whom his master held tenures; 4th count, theft of the same; 5th count, embezzlement of Co.'s Rs. 1204-15-2½, between the 30th of September, 1855, and 29th March, 1856 inclusive, being money entrusted to defendant's care in his capacity as *naib* of plain-tiffs for expences and rent as well as money received from teh-seeldars from mofussil collections; 6th count, theft of the same; 7th count, embezzlement of Co.'s Rs. 11 on 20th June, 1854, being rent received from plaintiff's ryot in his capacity as *naib* on the part of the plaintiff; 8th count, theft of the same.

Committing Officer.—Mr. J. H. Ravenshaw, Officiating Joint-Magistrate of Furreedpore.

Tried before Mr. J. E. S. Lillie, Sessions Judge of Dacca, on the 21st April, 1857.

Remarks by the Sessions Judge.—The reason of this refer-ence is that the law officer convicts the prisoner, and that I enter-tain a doubt whether his conviction is tenable with reference to Section 11, Act XIII. of 1850, as the distinct acts of embezzle-

ment, which have been included in the same charge, extend over a period of more than six months.

The case was first summarily disposed of by the former Joint-Magistrate, but on appeal, my predecessor remanded it for further evidence, and pointed out that as embezzlement is deemed by law to be felonious theft, the amount found to be embezzled should be explicitly stated, to shew whether the Joint-Magistrate is himself competent to dispose of the case.

The case having been committed to the Sessions, I have been obliged to return it twice to the Joint-Magistrate: first, because, as required by Section 13 of the abovenamed enactment, the nature and purpose of the trust were not set forth and other omissions were patent upon the face of the calendar, and secondly, after I had proceeded with the trial, because the sums exhibited in the calendar did not correspond with those described in the evidence for the prosecution.

I now proceed to relate the facts of the case, and for facility of reference I append a list of the documentary evidence I have admitted.

Prosecutor having heard that the prisoner had not credited all the money he had received from the tehseeldars, called upon him to make up his accounts, whereupon he absconded. He was sent back to the factory by another Indigo Planter, whose ryot he is, and a considerable deficiency having been discovered in his accounts, he again absconded.

Before he absconded for the second time a paper\* was drawn

\* Document No. 3, prosecutor.  
Witnesses Nos. 4 and 10.

up and was signed by him, in which he admitted that he was answerable for the sums therein

detailed, and that he must either produce vouchers or pay the money. Some of the items of that paper are not very intelligible by themselves, but can be understood from the explanations of witness No. 10, who wrote the paper, and from a reference to the cash† book. Prisoner executed an agree-

† Documents Nos. 1, and 2.

‡ Document No. 4.

ment‡ to pay rupees 75 one of the items, and verbally promised to pay rupees 500 in cash, and to give a bond for the remainder.

The deficiency exhibited in the paper mentioned above is rupees 903-10, but a reference to the cash books shows that there are some slight inaccuracies of no consequence.

The next deficiency is in the accounts of Hurchunder Sirkar, a tehsildar, witness No. 5, who has produced receipts§ from the

§ Documents Nos. 5 to 10.

prisoner for rupees 1508-10-6; whereas it appears that only rupees 1164-11 were credited in the cash|| books, leaving a deficiency of rupees 343-15-6.

|| Documents Nos. 1 and 2.

Document No. 11, shows that

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Dwarkanath Sirkar tehseeldar, witness No. 7, paid rupees 972 to the prisoner from October 1855 to March 1856, and the cash books show that rupees 835 were credited, leaving a deficiency of rupees 137.

Document No. 12, shows that witness No. 9, paid rupees 11 to the prisoner on the 20th of June 1854; and the cash-books show that that sum was not credited.

Document No. 13, shows that Komlakant Ghose, witness No. 8, paid rupees 140; and the cash-books show that that sum was not credited.

At the time prisoner first absconded the cash-books showed a cash balance of rupees  $84-5-8\frac{1}{2}$ ; but the prosecutor has deposed that nothing was forthcoming.

In his defence the prisoner first raises the objection which has led to this reference, and then enters into a long and confused statement, the principal allegation of which is that the cash-books are not genuine. His witnesses have not established anything of importance in his favor.

On the merits of the case I fully agree with the law officer. There can be no doubt that the cash-books produced are genuine; that it was the duty of the prisoner to see that the entries in them in the Bengali language were properly made; and that gross deficiencies in his accounts have been established against him.

Section 11, Act XIII. of 1850 declares that an offender may be proceeded against on the same charge for any number of distinct acts of embezzlement committed by him within six calendar months from the first to the last of such acts. Before the prisoner raised the objection, I was under the impression that it would be sufficient to indict the prisoner in a separate count in the same case for any act of embezzlement committed beyond the period of six months; but I now find that according to the literal interpretation of the law, a separate charge is necessary. I am, however, of opinion that the objection is purely technical; that the defence of the prisoner has not been prejudiced in any way by the course which has been adopted; and that it would have been extremely inconvenient in the present instance to have divided the case into several separate cases, the course which in strict conformity with the law would seem to be necessary.

I consider that the objection ought not to be allowed; that the prisoner should be convicted of feloniously stealing rupees 1616-7-2 $\frac{1}{2}$ ; and that he should be imprisoned for five years with labor in irons, and be fined to the extent of the amount stolen, under the provisions of Act XVI of 1850; but owing to the doubt above expressed, I deem it right to submit the case for the orders of the higher Court.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 511, dated 30th June, 1857.

The Court remark that this reference is irregular. The Sessions Judge and Law Officer agree as to the guilt of the prisoner, but the former doubts whether he can legally convict. This is not a matter for reference to this Court. If the Sessions Judge had doubts as to the facts of a case, or as to his competence to pass an adequate sentence, or wished to have authority to pass a mitigated sentence, these, or any of them, would be proper subjects for a reference. But where the case is (as it is here,) that the Sessions Judge and Law Officer agree that the facts establish the criminality, and the Sessions Judge has doubt only as to the construction of the law, or its applicability to the case, either in form or in substance, he should not, on *that* ground, refer the case for the consideration of this Court; but exercise his own judgment as to that point, and pass sentence; leaving the party, who may consider that the Sessions Judge's judgment is wrong, the ordinary remedy of an appeal to this Court, either on the facts, or the law points, or both.

The Court direct that the case be returned to the Sessions Judge, to be disposed of with reference to the above remarks.

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# Q U A R T E R L Y

No.

FOR JULY, AUGUST, AND SEPTEMBER.

1857.

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## NOTICE.

WITH reference to Government Order, dated the 27th May, 1857, No. 2783, *Quarterly Numbers* of Selected cases will in future be published.



REGULAR CASES.

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JULY.

1857.





# CASES

## IN THE

# NIZAMUT ADALUT.

VOL. VII.

PART II.

REGULAR CASES,

JULY, 1857.

PRESENT:

A. SCONCE, Esq., *Judge*.

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

*Trial No. 34.*

GOVERNMENT AND OKOOR MANJEE.

*versus*

LOOTHUR (No. 1.) RONOO (No. 2.) JOJHA (No. 3.)  
AND TONOO (No. 4.)

Assam.

1857.

*Trial No. 41.*

KERPAL, (No. 5.) AND JOJHA, AFORESAID (No. 6.)

July 2.

CRIME CHARGED.—Trial No. 34, 1st count, burglary, in having on the night of the 8th August, 1856, between the hours of 10 P. M. and 1 A. M. broken into a boat at Munnipooree Gaon, by breaking open the *jhamp* and stealing therefrom property to the value of Co.'s Rs. 407-13; 2nd count, knowingly receiving or keeping property acquired by theft as above.

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LOOTHUR  
CHABAL.

Prisoners convicted. Majority of Court deeming the evidence sufficient.

*Trial No. 41.*—1st count, burglary about two or two and half years ago, stolen during the night from a boat at or near Munni-

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July 2.

Case of  
LOOTHUR  
CHARAL.

pooree Gaon property among which was a *turban* valued 2 Rupees; 2nd count, knowingly receiving or keeping property acquired by theft as above.

CRIME ESTABLISHED.—Trial No. 34, Nos. 1, 2 and 3, burglary and theft of the property valued at Rs. 407-13; No. 4, knowingly keeping property by theft.

*Trial No. 41.*—Having knowingly had in their keeping property acquired by theft.

Committing Officer.—Lieutenant T. Lamb, Magistrate of Nowgong.

Tried before Major H. Vetch, Deputy Commissioner of Assam, on the 29th November, 1856.

*Remarks by the Deputy Commissioner.*—Trial No. 34.—It appears that the prosecutor's boat was broken into by thieves and robbed of property belonging to his employer, to the amount as first stated in list and in *urree* at Rs. 242-7-3. This was stated afterwards to have been the invoice price and in after deposition the value was raised to Rs. 407-13, to which the value of four seers of opium not mentioned in the first list has been added.

The people of the boat awoke as the thieves were escaping with their booty, but were deterred from pursuing by the threats of persons on shore; on a complaint being lodged at the thannah, an investigation was made and a large portion of the property was discovered in the house of Nos. 1, 3 and 4, and some in the garden of prisoner No. 2.

The prisoners Nos. 1, 2 and 3, have pleaded *guilty* to the charge of robbery, No. 4, pleaded *not guilty* to the 2nd count, with which he stood charged. The prisoners Nos. 1, 2 and 3, confessed before the police as well as before the Magistrate and these confessions and discovery of the stolen property in their possession; No. 4, before the police confessed to having had the property put into his house by his brother No. 2, knowing it to have been stolen, but he has since denied this, stating that he was not at home when his house was searched.

The jury and Magistrate were unanimous in convicting the prisoners Nos. 1, 2 and 3 of the burglary and theft and No. 4, of the 2nd count, of knowingly receiving or keeping the stolen property.

There cannot be a doubt as to the guilt of No. 2, Ronoo, No. 1, Loothur, and of No. 3, Jojha, and I convict them of the burglary and theft of the property, less the after-addition of the four seers of opium of the theft of which I find no satisfactory proof. No. 4, I convict of the 2nd count, of knowingly keeping property acquired by theft.

The prisoners No. 1, Loothur Charal, and No. 2, Ronoo Charal having been previously convicted of burglary and theft and being both of them notoriously bad characters.

The prisoner No. 3, Jojha, being also a person of reputed bad livelihood and having been convicted in case No. 41, of knowingly keeping property obtained by theft.

No. 4 appears to have good character, and as it would appear the property found in his house was placed there by his brother the thief.

*Trial No. 41.*—It appears that some two and half years ago when the prosecutor's boat was passing up the Kullung river near the village in which the prisoners reside, thieves came and stole some property from it through the window, and it is alleged and proved that a *turban*, which was seen in the hand of the prisoner No. 5, was a part of the stolen property. The prisoners pleaded *not guilty*, No. 5, that he had obtained it in pledge from No. 6, and No. 6, that he had inherited it from his father.

It appears on the evidence that No. 5 did get a *turban* of the kind from No. 6. It further appears that Nos. 5 and 6 are uncle and nephew and had lived together, and it is proved that they have both had possession of it.

After considering the evidence in this case, I do not find any proof that either of the prisoners committed the theft, but I convict them both, on violent presumption, of having knowingly had in their keeping property acquired by theft, and the prisoner No. 5, Kerpai, having been previously convicted and sentenced on a charge of burglary and theft.

*Sentence passed by the lower Court.*—*Trial No. 34*, Nos. 1 and 2, to ten (10) years' imprisonment each with labor in irons in banishment from this date and jointly and severally to pay a fine of Rs. 30-4-9½ with Nos. 2 and 3, under Act XVI. of 1850 to be levied by distress on their property and to be paid to the employers of the prosecutor in compensation of their losses. No. 3, to five years' imprisonment with labor in irons from this date being a consolidated sentence in this and case No. 41, and jointly and severally to pay a fine of Rupees 30-4-9½ with Nos. 1 and 2, under Act XVI. of 1850, &c. No. 4, to one year's imprisonment with labor in irons from this date.

*Trial No. 41.*—No. 5, to one year's imprisonment with labor and irons from this date. No. 6, consolidated sentence in this and case No. 34.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce, G. Loch and H. V. Bayley.)

*Mr. A. Sconce.*—On this trial, three prisoners, Loothur, Ronoo and Jojha, have been convicted of burglary and theft of property worth Rs. 367-13; and a fourth, Tonoo, of knowingly keeping property acquired by theft.

The burglary was committed on a boat which was in the charge of Akroor Manjee, the prosecutor; and the property stolen mainly consisted of cloths and thread.

The three first named prisoners pleaded guilty at the Sessions

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trial: even in their petition of appeal they admit the theft, but take exception to the prosecutor slandering them as dacoits.

I see no reason to interfere with the conviction or the sentence pronounced with respect to these three men, Loothur, Ronoo and Jojha.

With respect to Tonoo, the Deputy Commissioner remarks, "He appears to have a good character, and as it would appear the property found in his house was placed there by his brother the thief, I sentence him to one year's imprisonment with labor and irons." Tonoo's answer to the charge was, that he was absent when his house was searched, and that he knew not how the property claimed by prosecutor was placed in his house; and it seems to me that the evidence recorded is insufficient to disclose the mode in which the search was conducted for the property, or to fasten a conviction upon the prisoner.

Two witnesses have been examined upon this point, Phirooa and Kitaye. Phirooa says that Tonoo himself brought out two bundles from his house, and laying them in Ronoo's premises, said, "Who put the stolen property in my house?" The second witness says only, that on a search the property was found in Tonoo's house, and does not say that he saw Tonoo; nor indeed did Phirooa before the Magistrate make the statement which he made before the Deputy Commissioner. Further in the police mohurrir's report of 17th August, he says only that the property was found in Tonoo's house.

I think that the evidence is too indistinct and contradictory to convict Tonoo, and I would acquit him; but the papers must go to a second Judge.

*Mr. G. Loch.*—Of the guilt of the prisoners Nos. 1, 2 and 3, there is no question. The house of the prisoner No. 4, was searched, and stolen property found. He confessed to the police that his brother Ronoo, prisoner No. 2, had placed it there (a fact admitted by Ronoo), and that he (prisoner No. 4.) *knew at the time that it was stolen property.* This statement he subsequently denied; and at the Sessions stated that he did not know who had put the property in his house, and that he was not present at the search. The subscribing witnesses attest the confession, and one of the witnesses to the search deposes that the prisoner himself brought out the property from his house. The other witness merely deposes to the prisoner's house being searched, and property found. I do not see sufficient grounds for discrediting the mofussil confession. It is proved by the witnesses to have been made voluntarily; nor does the prisoner complain of ill-treatment. The Deputy Commissioner in consideration of his past good conduct sentenced him to a year's imprisonment; but the prisoner appears to me to have allowed his good name to be made use of as a cloak to his brother's nefarious transactions. I would not interfere with the sentence.

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*Mr. H. V. Bayley.*—This is referred for a third voice as to the guilt of prisoner, No. 4, Tonoo. The plea in prisoner's appeal is quite new, and now advanced for the first time, viz. that the mohurrir asked for 100 rupees, and on prisoner not giving it, the mohurrir got up this case. But the prisoner, in his defence to the Magistrate and Sessions Judge, pleads that no property was found in his *presence*, and that he knows nothing about the stolen property. His confession to the police is in these terms, "I myself did not thieve; but Ronoo Charal, prisoner No. 2, seven or eight days ago brought certain property to my house, *saying the articles were stolen*. But the property found on searching my house and suspected to be stolen, is my own." The witnesses Nos. 3 and 4, attest this confession, and detail it, stating that the prisoner confessed to *guilty knowledge*; and the prisoner does not in his defence before the Magistrate and Sessions Judge deny his mofussil confession, or say it was extorted; nor is there anything on record to shew that it was otherwise than voluntary. As to the prisoner's plea that the search was not made in his presence, I do not think the mohurrir's report of the 17th August, proves one thing or the other. It is a mere report of form. The prisoner, however, calls witnesses to substantiate this plea. Witness *Sahum*, says, at the search, prisoner had gone to his fields; but he adds that he (witness) did not see whence the property was produced. *Sadik* witness says to the Sessions Judge, that he cannot tell if prisoner was at home or not at the time of the search, though from meeting him on the road, he fancies he was not. *Kalee Morra* witness says, he does not know whether prisoner was present at the search or not. To the Sessions this witness says he fancies prisoner was not present, as he, prisoner, went to his fields. *Kataye*, a witness for the prosecution, deposes to the finding of the property. He is not asked as to the presence of the prisoner. *Phirooa*, another witness for the prosecution, says stolen property was found in this prisoner's house. This witness is merely asked as to whether prisoner was present or not; but no question was put, nor is there anything to shew prisoner was present. At the Sessions this witness proves that the prisoner was present, as he produced certain property and said, "Why do you put stolen property in my house?" But this was *previous* to prisoner's mofussil confession. I think the prisoner fails to substantiate any of his pleas; and that the evidence and his confession, warrant his conviction. I would reject the appeal.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Backergunge.

NOBOKISSORE DHUR.

1857. CRIME CHARGED.—Oppression and illegal confinement of  
Boikuntchunder Roy Chowdree.

July 6. CRIME ESTABLISHED.—Same as crime charged.

Case of Committing Officer.—Mr. H. A. R. Alexander, Magistrate of  
NOBOKISSORE Backergunge.

DHUR. Tried before Mr. F. B. Kemp, Sessions Judge of Backer-  
gunge, on the 6th April, 1857.

Prisoner re- *Remarks by the Sessions Judge.*—This case has been before  
leased, the evi- this Court on two former occasions.

dence for his The following is a copy of my remarks on conviction of form-  
conviction be- er prisoners. See case No. 3, of the statement of prisoners  
ing deemed in- punished without reference for the month of August, 1856.

sufficient. “In concurrence with the *futwa* of the law officer, I convict  
the prisoners of the crime set forth in this statement and sen-  
tence them as shown in column 12.”

“It must be admitted that there are some discrepancies in  
the evidence and I am of opinion that the quantity and value of  
the property plundered have probably been exaggerated, but the  
broad fact that the cutcherry and village of Bhoorghatta were  
attacked and plundered in open day in the presence of two bur-  
kundazes specially deputed to keep the peace, and the plaintiff  
carried off and kept for several days in illegal confinement is ful-  
ly established.”

On appeal, the Sudder Court on the 8th November, 1856,  
confirmed the sentence passed by this Court on two of the pri-  
soners, one prisoner was acquitted. Vide the Sudder Court’s  
proceedings on the trial of Anundchunder Chowdree and  
others.

In concurrence with the *futwa* of the law officer, I convict  
the prisoner Nobo Dhur of the crime stated and sentence him as  
shewn below.

The prisoner is the principal mofussil agent of Ameeroonnisa-  
sa-khatoun, and in my opinion there can be no doubt but that  
under the instructions of the aforesaid lady, the prisoner  
took a principal and active part in the gross oppression suffered  
by the prosecutor and his father’s ryots.

The evidence of Boikuntchunder Chowdree, the whole cir-  
cumstances of the case as disclosed in the record of the former

trial to which in the event of an appeal reference is solicited, the evidence of the mohurri and jemadar of the thannah which clearly establishes that the prisoner must have accompanied the oppressed man Boikuntchunder Chowdree to the thannah, and that the object of the prisoner in so doing was to intimidate Boikuntchunder Chowdree and to prevent him from making a full and true statement of the case, are, in my opinion, sufficient for conviction.

To expect "trustworthy" direct evidence of oppression, such as in this case has been exercised against Boikuntchunder Chowdree at the prisoner's instigation, is to expect an impossibility, but indirect evidence is sufficient and may, I think, be trusted.

The prisoner denies all participation in the oppression committed upon Boikuntchunder Chowdree and sets up an *alibi*, a common defence in this district. I do not credit the evidence for the defence. Jugutchunder Sircar is the prisoner's menial servant, another witness Buddunchunder Sircar is a relation of the aforesaid Jugutchunder Sircar, and the other witnesses are not of that respectable character and position in society as to command implicit trust in their testimonies.

*Sentence passed by the lower Court.*—To be imprisoned without irons for three years and to pay a fine of five hundred (500) rupees on or before the 7th May, 1857, or in default of payment to labor until the fine be paid or the term of his sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.)

*Mr. G. Loch.*—The evidence against the prisoner in this case is the deposition of Bykunt Roy witness No. 1, formerly co-prosecutor, and that witnesses Nos. 2 and 3, the mohurri and jemadar. Witness No. 1 in his present deposition distinctly asserts that the prisoner, appellant, took an active part in the riot, and was the manager of the whole affair. In his previous examination, this witness did not mention the name of the prisoner, till he found himself in duress at Puddo Mondul's house; when the prisoner with other three persons ordered him to be beaten. The witness was then taken to the house of Ameeroonnissa, and detained there,\*but it does not distinctly appear that the prisoner took any part in that detention, and his name is not again mentioned till he appears at the thannah, in company with the witness and Buddun.

As remarked by the Counsel for the appellant, the only evidence to prove the detention is, that of the witness No. 1 himself, and his evidence cannot be admitted as perfectly correct throughout; for had it been so, the Court would not on 8th November, 1856, (See N. A. R. of 1856, Vol. II. page 922) have released Anundo Chunder, who was deposed to by this

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witness as being one of the parties engaged in the riot, and as one who with others took him to Puddo Mondol's house. It is evident that the witness has made contradictory statements in his former and present examinations; and though the prisoner, appellant, was named in the first information given by Khowaj Sheikh to the police, as being concerned in the riot, yet his name is not again mentioned in the evidence given by that individual, or in that of any other witness taken by the Magistrate on 7th April; or he would have been charged with riot; so that from this circumstance the credibility of the witness (No. 1's) evidence is open to suspicion. It may be further observed that the Sessions Judge has acquitted the prisoner Buddun, assigning as a reason that the proof against him was similar to that against Anundo Chunder, released by the Nizamut Adawlut. The 2nd count however, against Buddun, viz. illegal duress, was more particularly proved against that prisoner than against Anundo Chunder by the additional evidence of the thannah mohurrir and jemadar. This evidence the Sessions Judge has rejected in the case of Buddun, and it cannot consistently be admitted against Nubkissore, against whom therefore there is no other proof but the evidence of the prosecutor, who, it has been shewn, has made contradictory statements; and his testimony by itself cannot be considered sufficient for conviction. I would acquit the prisoner.

*Mr. H. V. Bayley.*—The pleas of Counsel (Mr. Allan and Baboo Annodapershad) are of two kinds; 1st. As to the insufficiency of the evidence for the prosecution *per se* to sustain a conviction. 2nd, As to its insufficiency, in a legal view, to sustain the particular charge on which the conviction has been had.

The evidence for the prosecution consists of the testimony of witness No. 1, Boykunt Roy Chowdree, the person alleged to be injured, and interested; and of a police mohurrir and jemadar. The first named (witness No. 1) deposes that after the riot, (the trial of which is to be found at page 922, N. A. Reports, November, 8th, 1856) he was seized, and taken to the house of Puddo Mondol, where forty minutes or so after his (witness's) arrival, the prisoner arrived. This witness then proceeds to say to the Magistrate that the prisoner and Buddun, (released on trial) Rampershad, and Ram Narain Dhur ordered him to be beat; but he states to the Sessions Judge that *prisoner* gave that order, and that prisoner was the principal actor in the affair. This witness then goes on to say that he was taken away to the house of Ameeroonnissa, (in whose service the prisoner is a mohurrir) and confined there seven or eight days, and then taken to the thannah in a boat by prisoner. Witnesses Nos. 2 and 3 depose to the witness No. 1, arriving at the thannah in a boat, with prisoner, but not to any oppression

or illegal duress in the house of Puddo Mondol, or of Ameeroonnissa. Thus, the witness No. 1, who is co-prosecutor in the case of riot above referred to, (and to his testimony in that case he refers, as containing what he was to state in regard to this case,) is the only witness to the fact. It is quite true that under Section 28, Act II. of 1855, the evidence of one witness of full credit is sufficient to warrant a conviction, or acquittal. It is obvious also that it is possible that in some cases no more can be available, and justice would be defeated if that one were rejected; still I am not disposed to adopt this principle to its full extent in this case. Because, supposing even there should be a difficulty in obtaining evidence in regard to the alleged duress in the premises of Ameeroonnissa, yet Puddo Mondol, and the neighbours there could have been *at least called*, and it is clear that the father of the witness was cognizant of his son's position. Further, taking his evidence as what the witness has himself made it, i. e. a reference to his statement as a prosecutor in another case, such statement standing alone is not of itself a secure ground on which to sustain a conviction of this nature. There remains only circumstantial evidence of witnesses Nos. 2 and 3 above referred to; and I have before stated that that does not support a charge of oppression and illegal duress. It but shews Nobo and Buddun came with the witness No. 1 to the thannah, and suggests that Nobo and Buddun came in order that he, witness No. 1, should not make his complaint. Yet it is shewn that witness No. 1 was away with the mohurri, (witness No. 2) at one time, while prisoner and Buddun were with the jemadar (witness No. 3) *elsewhere*, at the same time.

The Sessions Judge has particularly requested us to refer to the record of the riot case before cited. (N. A. Report, November, 1856). The evidence in that case, if to be treated as legal evidence against the prisoner in this case, should have been duly recorded, and entered in the Calendar of this case. But looking upon it as an official record, and using it as far as is right for the purpose of arriving at the truth, and doing equal justice, I do not see that it proves the case for the prosecution *here*, or proves *that charge* which is now before us. Indeed, it would be a question whether the witnesses Nos. 17 to 14, 25 to 33 and 37 mentioned this prisoner at all on their very first examination.

Under these circumstances I do not think the evidence sufficient *per se*; and it is therefore unnecessary to go into the question whether, in a legal view, it covers and supports the charge.

I acquit the prisoner, and direct his immediate release.

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CASE OF  
NOBOKISSORE  
DHUR.

PRESENT :

G. LOCH AND H. V. RAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND MOORUTH LALL

*versus*

BISSESSUR BIND ALIAS LOCHMUN (No. 3.) BHEE-  
KAREE CHOWBEY (No. 4.) KEENOO CHOWBEY  
(No. 5.) SUNGUM CHOWBEY (No. 6.) BEENGOO  
CHOWBEY, (No. 7.) LAYDUR BIND ALIAS LOCHUN  
(No. 8.) BILLAR BIND (No. 9.) HURKUM BIND  
(No. 10.) TALLEYMUN BIND ALIAS TALOO (No. 11.)  
RAMSRUN BIND (No. 12.) DULJEETH BIND (No.  
13.) DHUNNOO BIND ALIAS GOBURDHUN (No. 14.)  
SHEOPERSHAD BIND (No. 15.) RAMSRUN BIND,  
2ND (No. 16.) RAMSUHOY BIND (No. 17.) PURIAG  
AHEER (No. 18.) BUKHOREE AHEER (No. 19.)  
BHUGWAN AHEER (No. 20.) SUJJEA CHOWBEY  
(No. 21.) RAMBREEA DOSAD (No. 22.) DOOLAR  
BIND (No. 23.) SHEOSUHOY BIND (No. 24.) LOCHUN  
BIND (No. 25.) SHEODYAL BIND (No. 26.) SHEO-  
BURT BIND (No. 27.) BAYDHAISEE BIND (No. 28.)  
RAMBRUT BIND (No. 29.) SOORDHEE BIND (No.  
30.) AJOODHIA BIND (No. 31.) BHONDLA BIND  
(No. 32.) KHYJOO BIND (No. 33.) KHURSHEN BIND  
(No. 34.) AJOODHIA BIND 2ND (No. 35.) BHUNJUN  
BIND (No. 36.) BULLEE BIND (No. 37.) JOOTUN  
BIND (No. 38.) GOORSUHOY BIND (No. 39.) JEO-  
LALL BIND (No. 40.) MOHUN BIND (No. 41.) BAI-  
HAREE BIND ALIAS BALJORE (No. 42.) SHEO  
CHURN BIND (No. 43.) UKLOO BIND ALIAS TUHLOO  
(No. 44.) SAHIN BIND ALIAS ZAHIN (No. 45.) ROU-  
SHUN BIND (No. 46.) BEJADHUR BIND (No. 47.)  
HURDYAL BIND (No. 48.) DHEEP BIND (No. 49.)  
BHAGEE BIND (No. 50.) AND ROOPCHAND (No. 51.)

Patna.

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July 9.

Case of  
BISSESSUR  
alias  
LOCHMUN  
BIND  
and others.

Prisoner  
convicted of  
dacoity. One  
sentenced ca-  
pitally under  
Clause 2, Sec-  
tion 4, Reg.  
LIII. 1803.  
Remarks on  
good service of  
Deputy Ma-  
gistrate, Police  
and Tehsildar.

CRIME CHARGED.—1st count, dacoity with wounding in the  
house of Mooruth Lall and plundering therefrom property to  
the value of Rs. 905-13; 2nd count, having belonged to a gang  
of dacoits; 3rd count, Nos. 4 to 20 and Nos. 47 and 51, receiv-  
ing property obtained by dacoity, knowing that it had been so  
obtained.  
Committing Officer.—Mr. F. A. Vincent, Deputy Magistrate  
of Barh.

Tried before Mr. R. N. Farquharson, Sessions Judge of Patna, on the 24th April, 1857.

*Remarks by the Sessions Judge.*—Prisoners plead not guilty.

The original commitment included forty-nine persons, but two have since died, and one is sick with little hopes of his recovery; vide Civil Surgeon's certificate on the record.

This case has been fully described by the Committing Magistrate in his calendar of commitment.

The following facts are elicited from the evidence for the prosecution as heard and recorded in this Court on the 20th, 21st, 22nd, 23rd and 24th of April, 1857.

A dacoity with lighted *mussals* and all the usual concomitant of robbery with open violence\* was effected in the house of the

|             |                |                                   |
|-------------|----------------|-----------------------------------|
| Wit. No. 1, | Bullee,        | prosecutor, Mooruth Lall, on the  |
| " " 2,      | Yad Ally Khan. | night of the 2nd of Decem-        |
| " " 3,      | Mahomed Ally,  | ber, 1856, by a large body of     |
| " " 4,      | Jogu Roy,      | men armed with clubs and          |
| " " 5,      | Jeetoo,        | swords, who first secured and     |
| " " 6,      | Bhuttun,       | bound the chowkeedar† and         |
| " " 7,      | Sookhun Roy,   | then broke open the door with     |
| " " 8,      | Pokhun Roy,    | hatchets and robbed the house     |
| " " 9,      | Nirput Sing,   | of property valued at about       |
| " " 10,     | Fakeera,       | 900 Rs.‡ The master of the        |
| " " 11,     | Teyka and      | house was habitually absent in    |
| " " 32,     | Khedun.        | the city of Patna, but his family |

† Witness for prosecution, No. 6, Bhuttun.

‡ Evidence of Mooruth Lall, prosecutor.

the robbers in alarm made off so closely pressed that two cumbersome articles of plunder, a long silver spear and a large silver-handled *punkha* were abandoned in a field on the line of flight,§

§ Witness for prosecution No. 9, Nirput Sing.

|| Witnesses for prosecution, No.

|     |                 |
|-----|-----------------|
| 4,  | Jogu Roy,       |
| " " | 5, Jeetoo,      |
| " " | 6, Bhuttun,     |
| " " | 7, Sookhun Roy, |
| " " | 8, Pokhun Roy,  |
| " " | 9, Nirput Sing, |
| " " | 10, Fakeera,    |
| " " | 11, Teyka.      |

he belonged, so as to enable the darogah of Barh, aided as he went by the police of the neighbouring thannah of Durriapoore and the tehsildar of Mokawan, to follow and get ahead of the boats in which the robbers were proceeding down the Ganges, and apprehend, mostly in their boats, the main body of the dacoits, some few were apprehended ashore, hiding in the fields

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and some escaped and were tracked through the disclosures of their comrades, and apprehended after return to their villages in zillah Shahabad. There were in all seized two (2) large and five (5) small boats (*suringas*) with their crews, passengers and freight, the former all Binds professional boatmen and equally

\* There were five Brahmuns (Chowbeys,) three Goalas (Ahirs,) one Doosad and two Mussalmans.

Witnesses for prosecution, No.

- 1, Bulleo,
- " 2, Yad Ally Khan,
- " 3, Mahomed Ally,
- " 12, Boolakilal darogah,
- " 13, Abdool Kureem,
- " 14, Munsha Roy,
- " 15, Bursuhoy.

professional thieves; the passengers including the approvers, notorious dacoits, and bad characters,\* and the freight, sand and mud made to simulate sugar and molasses. This last was in the two large boats only.

The points established against prisoner are thus clearly stated by Mr. Vincent, the Committing Deputy Magistrate.

"No. 3, *Bissessur Bind* alias *Luchmun*.—Was seized in the act, he having fallen into a well in the immediate vicinity of plaintiff's house. On being taken out of the well, he peached upon his comrades, telling in what direction they had gone, and on his information they were pursued and arrested; when made over to the police by the villagers who captured him, he said his name was Luchmun and confessed his guilt to the darogah (who duly recorded it) repeating it verbally to me, but although taken in the act, pleaded *not guilty* when his defence was being taken, he afterwards said his real name was Bissessur Bind, he is sworn to by the approvers† and recognised by witnesses Nos. 4, 5, 9, 10

- † Wit. No. 1, Bullee Aheer,  
" 2, Yad Ally Khan,  
" 3, Mahomed Ally.

and 11,‡ also recognised by Sheo-baluk Aheer, *goindah*, witness No. 35, as having been concerned in three other dacoities, viz. the *Balooipoor* dacoity in zillah Gha-zipoor when nearly a lakh of Rupees was plundered; a dacoity in the house of a man named Keenooram in the town of Gha-

zipoor itself, when upwards of 82,000 Rupees were carried off; and a dacoity in the village of Kunchunpoor, zillah Goruckpoor, the records of those cases prove that he was concerned in the two former, having been apprehended, but unfortunately acquitted in the Balooipoor dacoity, and having eluded capture in the case of Keenooram, although warrants were issued for his apprehension, his defence is that he was a traveller and drunk on the night of the dacoity, when he was wrongfully seized, he named two witnesses as to character, these men, witnesses Nos. 36§ and

- § Wit. No. 36, Jhunsam Bind.  
" 37, Nujoo Khan.

37,|| were summoned and declared him to be a notorious *budmash* and dacoit, and that he was

expelled by the zemindar of his village as an incorrigibly bad character.

"No. 4, *Bheekaree Choubey*.—Sworn to by the approvers as being one of their *surdars* and recognized by witnesses Nos.

- Wit. No. 1, Bullee,  
 " " 2, Yad Ally Khan,  
 " " 3, Mahomed Ally,  
 " " 4, Jogu Roy,  
 " " 5, Jeetoo,  
 " " 6, Bhuttun,  
 " " 7, Sookhun Roy,  
 " " 8, Pokhun Roy,  
 " " 9, Nirput Singh,  
 " " 10, Fukeera,  
 " " 11, Teyka.

† Wit. No. 6, Bhuttun,

‡ Wit. No. 1, Bullee Aheer.

Wit. No. 2, Yad Ally Khan,

" " 3, Mahomed Ally.

found a stick, proved to be a portion of the plundered property; he confessed verbally to the darogah when first arrested, in the presence of Abdool Kureem (witness No. 13,) the tehsildar of Mokawauh, an influential and respectable man. Before me he pleaded *not guilty* and named two witnesses for the defence. One appeared, a man named Hurdial Chumar, witness No. 38, who deposed that Bheekaree Choubey had left his village to commit dacoities in company with Hurdial Bind\* (defendant No. 48) a notorious dacoit, adding, however, that this was Bheekaree Choubey's first dacoity, defendant declined having his other witness summoned."

"No. 5, *Keenoo Choubey alias Ishree*.—Sworn to by the approvers,§ and recognised by witnesses Nos. 1, 2, 3, 4, 5, 6, 7,

- § Wit. No. 1, Bullee Aheer,  
 " " 2, Yad Ally Khan,  
 " " 3, Mahomed Ally.

- || Wit. No. 1, Bullee Aheer,  
 " " 2, Yad Ally Khan,  
 " " 3, Mahomed Ally,  
 " " 4, Jogu Roy,  
 " " 5, Jeetoo Muthon,  
 " " 6, Bhuttun Kahar,  
 " " 7, Sookun Roy,  
 " " 8, Pokhun Roy,  
 " " 9, Nirput Singh,  
 " " 10, Fukeera,  
 " " 11, Toyka Muhtoe.

only a false name for himself but for his father, this was proved

¶ Wit. No. 40, Akash Choubey.

" " 41, Bundun Pandey.

1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11,\* as having been actively concerned in this dacoity with wounding, he having struck witness No. 6,† with a stick and having carried off in his own hand a silver-handled *punkah*, which he abandoned on being closely pressed, he was seized on the following morning, in company with the approvers‡ at Mokawauh, and attached to the boat in which he was taken was

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most actively concerned in the dacoity and wounding, this defendant was seen by the above witnesses carrying a silver-handled spear which he also abandoned, on being closely pressed, he was seized under the same circumstances as defendant No. 4, and he also confessed verbally to the darogah in the presence of Abdool Kurreem. Before me denied every thing and gave in not on the arrival of his own witnesses¶ Nos. 40 and 41, who further declared he was a very bad

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character and was known to have left his village to commit dacoities."

"No. 6, *Sungum Choubey*.—Sworn to by the approvers\*

\* Wit. No. 1, Bullee Aheer,  
" " 2, Yad Ally Khan,  
" " 3, Mahomed Ally.

and recognised by witnesses Nos. 1, 2, 3 and 6,† as having been actively concerned in the dacoity and wounding, he having cut

† Wit. No. 6, Bhuttun.

witness No. 6's head open with

a blow of a stick, he was seized at the same time as defendant

‡ Wit. No. 42, Ramgobind Roy.

Nos. 4 and 5, his own witnesses

§ " " 43, Injore.

Nos. 42‡ and 43§ depose to his being a bad character and an

associate of dacoits."

"No. 7, *Reengoo Choubey alias Kooldeep*.—Sworn to by the approvers and recognised by witnesses Nos. 1, 2, 3 and 6, as having taken an active part in the dacoity and wounding, he was seized the following morning in company with defendants

|| Wit. No. 44, Kishna Koormee,  
" " 45, Gopee Panrey.

Nos. 4, 5 and 6, his own witnesses Nos. 44 and 45,|| depose to his having left his village in

company with dacoits in Aughun."

"No. 8, *Laydhur Bind alias Lochun*.—Sworn to by the ap-

¶ Wit. No. 1, Bullee Aheer,  
" " 2, Yad Ally Khan,  
" " 3, Mahomed Ally.

provers¶ and recognised by witnesses Nos. 1, 2, 3 and 7,\* as having been actively concerned in the dacoity and wounding, he having struck witness No. 7,

\* Wit. No. 7, Sookhun.

two blows of a stick. He was

seized with defendants Nos 4, 5, 6 and 7, recognised as a notorious dacoit by the Azimghur *goindahs*, Sheobaluk and Suhoy witness No. 35."

"No. 9, *Billar Bind*.—Sworn to by the approver† and re-

† Wit. No. 2, Bhuttun.

cognised by witnesses Nos. 1, 2, 3 and 6, as having taken a pro-

minent part in the dacoity, he having in company with defendants Nos. 12 and 26, held witness No. 6. Witnesses Nos. 1, 2 and 3, (approvers) state that this man and defendant No. 50, (Bhagee) broke in the doors of Mooruth Lall's house with axes recognised by Suhoy, one of the Azimghur *goindahs*, as a dacoit and the brother of *Seear Bind* one of the greatest dacoits in

‡ Wit. No. 48, Thakoor Choubey,

India. His own witnesses Nos. 48

" " 49, Deenoo Choubey.

and 49,‡ testify greatly against him, he was seized with defend-

ants Nos. 4, 5, 6, 7 and 8."

"No. 10, *Hurkuru Bind*.—Sworn to by the approvers (witnesses Nos. 1, 2 and 3.) This man confessed not only to the darogah but freely to me detailing every incident connected with the dacoity expedition, confirming most fully the state-

ments of the approvers ; was seized in company with defendants Nos. 4, 5, 6, 7, 8 and 9, recognised by Sheobaluk *goindah*, witness No. 35."

"No. 11, *Talleymun Bind alias Taloo*.—Sworn to by the approvers (witnesses Nos. 1, 2 and 3,) and recognised by the Azimgurh Police and *goindahs* as a notorious dacoit whom they had long been endeavouring to capture, his name too is down in a list of dacoits sent to this office by the Magistrate of Goruckpoor, also in the papers of the case of Keenooram's dacoity sent by the Magistrate of Ghazipoor, an abstract of which, for speedy reference, is attached to this case, the originals also will accompany these papers, but being cumbersome and complicated, abstracts have been prepared in this office. Sheobaluk *goindah* witness No. 35, on recognising this defendant at once declared that he had been wounded by a spear-thrust in the back in a former dacoity, and on examination a scar and hole was clearly visible. This dacoit was seized in company with defendants Nos. 4, 5, 6, 7, 8, 9 and 10."

"No. 12, *Rameun Bind*.—Sworn to by the approvers,\* and recognised by witnesses Nos. 1, 2, 3 and 6† as having been actively concerned in the dacoity and wounding, he having held witness No. 6. He was seized in company with defendants Nos. 4, 5, 6, 7, 8, 9, 10 and 11. His own witness No. 54,‡ testifies against him declaring he is a very bad character.

"No. 13, *Duljeeth Bind*.—Sworn to by the approvers (witnesses Nos. 1, 2 and 3,) was seized in company with defendants from Nos. 4 to 12, was recognised by the Azimgurh *goindah*, witness No. 35, as an old associate, having committed a dacoity in company with him in the village of Rughoo-nathpoor, zillah Ghazeepoor, in which dacoity eighteen dacoits were convicted as per mohafiz dufter's *kyfeeut* attached to this case, named no witnesses."

"No. 14, *Dhunnoo Bind alias Gaburdhun*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, was seized in company with defendants from Nos. 4 to 13, was recognized by witness No. 35,§ as an old associate, they having together committed a dacoity in the village of Zungeepoor Dokutteeah, zillah Ghazipoor in which case seven dacoits were convicted as per mohafiz dufter's *kyfeeut* attached to this case, he was also arrested in "Keenooram's" case and allowed to turn approver, which he did, his name is also down in the list of Goruckpoor dacoits attached to this case, named no witnesses."

"No. 15, *Sheepershad Bind*.—Sworn to by the approvers

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\* Wit. No. 1, Bullee Aheer,  
" " 2, Yad Ally Khan.  
" " 3, Mahomed Ally.

† Wit. No. 6, Bhuttun.

‡ Wit. No. 54, Ubhy Oopodhin.

§ Wit. No. 35, Sheobaluk.



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*alias*  
LOCHMUN  
BIND  
and others.

Wit. No. 1, Bullee,  
" " 2, Yud Ally Khan'  
" " 3, Mahomed Ally.

(witnesses Nos. 1, 2 and 3,\*)  
was seized in company with de-  
fendants from Nos. 4 to 14, re-  
cognized by witness No. 35,† as  
an old dacoity associate, named  
no witnesses."

† Wit. No. 35, Sheobaluk.

"No. 16, *Ram Surn Bind, 2nd.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, was seized in company with defendants from No. 4 to 15, recognised by witness No. 35, as an old dacoity associate, named no witnesses."

"No. 17, *Ram Suhoy Bind.*—Sworn to by the approvers witnesses Nos. 1, 2 and 3, was seized in company with defendants from Nos. 4 to 16, named no witnesses."

"No. 18, *Puriag Aheer alias Chikooree.*—Sworn to by the approvers witnesses Nos. 1, 2 and 3, is own brother to Bullee Aheer, witness No. 1, and was seized in company with him as well as with defendants from Nos. 4 to 17, concealed his real name also his father's, named no witnesses."

"No. 19, *Bukhoree Aheer.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, was seized in company with defendants from Nos. 4 to 18, named no witnesses."

"No. 20, *Bhugwan Aheer.*—Sworn to by the approvers as belonging to the gang of dacoits, but declared by witness No. 1,‡ to have remained ill on board the boat when the remainder of the gang attacked and plundered prosecutor's house, was seized in company with defendants from Nos. 4 to 19, named two witnesses. these men Nos. 59 and 60.§ testify to this defendant's having left his village in company with defendants Nos. 47 and 48, and others, on a dacoity expedition, recognised by witness No. 35, as an old dacoity associate."

§ Wit. No. 25, Bhunjun  
Choubey,  
" " 60, Hurdial.

"No. 21, *Sujjen Choubey.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, and recognised by witness No. 5.|| who, on the night of the dacoity, when the dacoits were

retreating, knocked this defendant down with a *lattee* and nearly captured him, but he was rescued by his comrades and escaped for the time, he was, however, captured by Munsha Roy burkundaz whilst escaping down stream in an open *dinghee* or *surringah* in company with Mohummud Ally, approver, (witness No. 8,) and thirteen other dacoits on Thursday morning about eight A. M. off Sulhabad Deearah, opposite Soorujghurah thannah (vide map of this case) when this defendant was brought to the thannah he was at once recognised by witness No. 5,¶ who pointed out on this man's back the marks of the *lattee* blows,

¶ Wit. No. 5, Jeetoo.

he (witness No. 5,) had administered two nights previous. The marks I myself distinctly saw, this defendant is nearly related to defendants Nos. 4, 5, 6 and 7, who were captured at Mokawan he named two witnesses Nos. 61 and 62,\* who de-

\* Wit. No. 61, Goindah Choubey.

" " 62, Boodhun Choubey.

posed to his being a bad character and a constant associate of Bind dacoits, and that it was well known, he had left his village in Ughun in Hurdyal

Bind's (defendant No. 48's) boat to commit dacoities. This man endeavoured to conceal his father's real name, a common case among dacoits."

"No. 22, *Ramburn Dosadh*.—Sworn to by the approvers,

† Wit. No. 1, Bullee Aheer, witnesses Nos. 1, 2 and 3,† was

" " 2, Yad Ally Khan, seized in company with the

" " 3, Mohamed Ally. above Sujjen Choubey, defendant

No. 21, this man confessed verbally to me but pleaded *not guilty* with the others when put on his defence, recognized by witness

† Wit. No. 35, Sheobaluk. No. 35† as an old dacoity associate, also by Suhoy, the

Azingurh convict, named no witnesses."

"No. 23, *Doolar Bind*.—Sworn to by the approvers witnesses Nos. 1, 2 and 3, seized in company with defendants Nos. 21 and 22, was convicted of highway robbery and imprisoned in the Arrah jail for five years, recognised by witness No. 35, as an old dacoity associate, named no witnesses; vide mohafiz dufter's *kyfeut* attached to this case."

"No. 24, *Sheo Suhoy Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, seized in company with defendants Nos. 21, 22 and 23, named no witnesses."

"No. 25, *Lochun Bind alias Ramkhelaram*.—Sworn to by the approvers, witnesses Nos. 1,

§ Wit. No. 1, Bullee Aheer, 2 and 3,§ seized in company

" " 2, Yad Ally Khan, with defendants from Nos. 21

" " 3, Mahomed Ally. to 24. This man's name is down

in the list of unapprehended dacoits, who plundered Keenooram's house in the city of Ghazeepoor; named one witness No.

|| Wit. No. 69, Naik Choubey. 69,|| who deposes to defendant being a bad character and to his

having left his village in Ughun to commit dacoities."

"No. 26, *Sheodyal Bind*.—Sworn to by the approvers, wit-

¶ Wit. No. 6, Bhuttun. nesses Nos. 1, 2 and 3, and recognised by witness No. 6,¶

whose hands he held whilst the dacoity was being committed, seized in company with defendants from Nos. 21 to 25, recognised by Azingurh police jemadar, *Jharoo-singh* and *goindah*, (wit-

\* Wit. No. 35, Sheobaluk. nesses No. 35,\*) as a notorious dacoit; named one witness No.

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\* Wit. No. 70, Sheeoochurn Muthon. 70,\* who deposes to his being a very bad character."

"No. 27, *Sheoburt Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, seized in company with defendants from Nos. 21 to 26, recognised by Azimgurh police jemadar and witness No. 35, as the son and brother of two notorious dacoits who are, at this moment, in the Azimgurh jail, for dacoity; named no witnesses."

"No. 28, *Baydhaisee Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, seized in company with defendants from Nos. 21 to 27, named two witnesses, only one was examined.

† Wit. No. 72, Hossain Hujam. No. 72,† who deposed that defendant was a *budmash* and had left his village in defendant No. 48's boat to commit dacoities."

"No. 29, *Ramburt Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, seized in company with defendants from Nos. 21 to 28, named no witnesses."

"No. 30, *Soobdhee Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, seized in company with defendants from Nos. 21 to 29, named no witnesses."

"No. 31, *Ajoodhia Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3, seized in company with defendants from Nos. 21 to 30, recognised by the Azimgurh and Ghazipoor police as a bad character and the son-in-law of a notorious dacoit now in the Azimgurh jail, his name is also down in the Goruckpoor list of dacoits, declined having his witnesses summoned."

‡ Wit. No. 1, Bullee Aheer.

" " 2, Yad Allee Khan.

" " 3, Mahomed Allee.

"No. 32, *Bhondla Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,‡ and recognised by witness No. 6,§ whom this defendant beat on the night of the dacoity, seized in company with defendants from

§ Wit. No. 6, Bhuttun Kahar. Nos. 21 to 30, recognised by witness No. 35,|| as being a constant associate of Blurut Bind, a notorious dacoit in the

|| Wit. No. 35, Sheeobaluk. Goruckpoor and Azimgurh districts, named no witnesses."

"No. 33, *Khujjoo Bind*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,¶ seized in company with defendants from Nos. 21 to 32, named no witnesses."

¶ Wit. No. 1, Bullee Aheer.

" " 2, Yad Allee Khan.

" " Mohomed Allee.

"No. 34, *Khursen Bind*.—This man most undoubtedly must be considered the ringleader in this case, in the first place he is an escaped dacoit convict having broken the Gazeepoor jail whilst under sentence for a dacoity he committed in the village of Baloopoor. On breaking jail, it appears, he settled in the village of Poonaruk, six miles from Barh, and there, (for two years)

cultivated land under a *pottah* from Morruth Lall, the prosecutor, in this case; he thus became acquainted with this locality and prosecutor's circumstances, soon getting tired of this quiet life, he returned to his old haunts in Ghazeepoor and Shahabad, and it was through his representations that this attack was made, the approvers all declaring that he was their spy and one of the leaders, and as such appropriated a large portion of the plunder; immediately after the dacoity, he was recognised by

Wit. No. 7, Sookun Roy.  
 " " 8, Pookun Roy.  
 " " 9, Nirput Sing.  
 " " 10, Fugueera.  
 " " 11, Teyka.

witnesses Nos. 7, 8, 9, 10 and 11,\* at the time of dacoity, these witnesses being servants and ryots of plaintiff who had known *Khursen* when he was living at *Poonaruk*, was seized by *Mun-*

*sha Roy burkundaz*, of the village of *Wulleepoor* (vide map) in company with eight others, all of whom were escaping down stream in three *surringahs* and were pointed out by *Muhummud Allee* approver as members of the dacoity-gang, perceiving escape to be hopeless, *Khursen* was seen to throw a bundle overboard, containing no doubt a portion of the plunder. Divers

† Wit. No. 17, Pursheed Malla.  
 " " 18, Bhudace Malla.

(witnesses Nos. 17 and 18,)<sup>†</sup> were instantly employed, but the water was too deep and the current too rapid to admit of recovering the abandoned booty.

*Khursen* after throwing the bundle overboard drew his sword (a keen and valuable blade which the approvers declare he carried in his hand throughout the dacoity) but after a short scuffle was disarmed and bound. This man was recognised by the *Azimgurh* police and *goindahs* as a most notorious dacoit (vide their statements attached to this case) witness No. 35,‡ declar-

‡ Wit. No. 35, Sheobaluk.

ing that *Khursen* to his knowledge had committed seven dacoities in the *Azimgurh*, *Goruckpoor* *Ghazipoor*, and *Shahabad* districts, including the one for which he was imprisoned in the *Ghazipoor* jail, *Khursen* made a partial confession to the darogah, which was attested by two respectable *bunnecas* witnesses Nos.

§ Wit. No. 21, Lalljee Bunneca.  
 " " 23, Guneshee Moddee.

21 and 23,§ before me he denied every thing, subsequently verbally admitting that he had

broken the *Ghazipoor* jail, detailing every particular of his escape, named no witnesses."

"No. 35, *Ajoodhia Bind*, 2nd.—Sworn to by the approvers,

• Wit. No. 1, Bullee Aheer.  
 " " 2, Yad Allee Khan.  
 " " 3, Mahomed Allee.

witnesses Nos. 1, 2 and 3,|| seized in company with *Khursen Bind*, defendant No. 34, and was tried for dacoity (but acquitted) in

the case in which *Khursen* was imprisoned, his name is down in the list of *Goruckpoor* dacoits attached to this case, named no

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*alias*  
**LOCHMUN**  
**BIND**  
 and others.

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witnesses, but the darogah of thannah Mohumdabad, zillah Ghazipoor, was ordered to enquire into his character and reports him a notorious budmash."

"*No. 36, Bhunjen Bind.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,\* seized in company with defendants Nos. 34 and 35, his own witnesses Nos. 54 and 76,† depose to his being a dacoit and bad character and his name is down in the list of Goruckpoor dacoits."

\* Wit. No. 1, Bullee Aheer.  
 " " 2, Yad Allee Khan.  
 " " 3, Mahomed Allee.

† Wit. No. 54, Ubhoy Oopadhia.  
 " " 76, Afzul Meenan.

"*No. 37, Bullee Bind.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,‡ seized in company with defendants Nos. 34, 35 and 36, was recognised by Khyrat Allee, jail burkundaz of Arrah, as having been confined in that jail, confirmed by the mohafiz dufter's *kyfecut*, declaring that under the name of Bullaram Bind he had been confined in the Arrah jail for two and a half years for burglary and theft, recognised by witness

§ Wit No. 35, Sheobaluk.

No. 35,§ as a dacoit associate, named no witnesses."

"*No. 38, Jootun Bind.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,|| seized in company with defendants from No. 34 to 37, recognised by witness No. 35,¶ as old dacoity associate, named no witnesses."

|| Wit. No. 1, Bullee Aheer.  
 " " 2, Yad Allee Khan.  
 " " 3, Mahomed Allee.

¶ Wit. No. 35, Sheobaluk.

"*No. 39, Gourshuhoy Bind.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,\* seized in company with defendants from Nos. 34 to 38, recognised by witness No. 35,† as son-in-law to Suhoy Kydee, now in the Azimgurh jail, for dacoity, and

\* Wit. No. 1, Bullee Aheer.  
 " " 2, Yad Allee Khan.  
 " " 3, Mahomed Allee.

† Wit. No. 35, Sheobaluk.

who was sent down to Barh to identify his old associates, who also admits that this defendant is his son-in-law, named no witnesses.

"*No. 40, Jeolall Bind alias Bujlall.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,‡ seized in company with defendants from Nos. 34 to 39, named no witnesses."

‡ Wit. No. 1, Bullee Aheer.  
 " " 2, Yad Allee Khan.  
 " " 3, Mahomed Allee.

"*No. 41, Mohun Bind.*—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,§ seized in company with defendants from Nos. 34 to 40, recognised by

§ Wit. No. 1, Bullee Aheer.  
 " " 2, Yad Allee Khan.  
 " " 3, Mahomed Allee.

\* Wit. No. 35, Sheobaluk. witness No. 35,\* as an old dacoity associate, who had been wounded by mistake in the dark by a fellow dacoit named *Bhurt Bind*, the scar of which he pointed out to me, named no witnesses.

"No. 42, *Baiharee Bind alias Baljore*.—Sworn to by the approvers, witnesses Nos. 1, 2 and 3,† seized in company with three others by the villagers of Poonaruk (vide map) who seeing them skulking by bye-paths and from their very forbidding appearance, suspecting them to be dacoits, after some difficulty, captured them early on Thursday morning, the 4th December, and conveyed them to the thannah, where they were at once identified and named by the approvers, recognised by the Azim-gurh police and *goindahs*, viz. Suhoy convict and witness No.

† Wit. No. 1, Bullee Aheer, 35† as a notorious dacoit, named  
" " 2, Yad Ally Khan, no witnesses.  
" " 3, Mahomed Ally.

appearance, suspecting them to be dacoits, after some difficulty, captured them early on Thursday morning, the 4th December, and conveyed them to the thannah, where they were at once identified and named by the approvers, recognised by the Azim-gurh police and *goindahs*, viz. Suhoy convict and witness No.

† Wit. No. 35, Sheobaluk. 35† as a notorious dacoit, named no witnesses.

"No. 43, *Sheochurn Bind alias Muhajun*.—Sworn to by all the approvers, witnesses Nos. 1, 2 and 3.§ seized in company with Bai-haree Bind, defendant No. 42, at Poonaruk, named no witnesses.

"No. 44, *Ukloo Bind alias Tuhloo*.—Sworn to by all the approvers, witnesses Nos. 1, 2 and 3,|| seized in company with defendants Nos. 42 and 43, named no witnesses.

"No. 45, *Salun Bind alias Zalun*.—Sworn to by all the approvers, witnesses Nos. 1, 2 and 3,¶ seized in company with defendants Nos. 42 to 44, was arrested and tried for the dacoity in

which Khursen Bind was convicted (vide papers of that case, the Baloopoor dacoity) and the mohurrir's *kyfecut* attached to this case, but acquitted, recognised by witness No. 35\* as an

\* Wit. No. 35, Sheobaluk. old dacoity associate, named no witnesses.

"No. 46, *Roushun Bind*.—This man was not captured till thirteen days after the dacoity but the approvers† from the commencement named him and defendant Nos. 48 and 50 as

† Wit. No. 1, Bullee Aheer, their leaders and the owners of  
" " 2, Yad Ally Khan, the boats in which they were  
" " 3, Mahomed Ally.

taken, but they unfortunately escaped, and with them they carried off the remaining portion of the plunder, over and above what Khursen Bind, defendant No. 34 was seen to throw into the river, their names were at once forwarded to the Magistrate

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1857. of Shahabad, and through him they were after some time captured and sent down to me for trial, recognised by witness No. 35\* as an old dacoity associate, named no witnesses.
- July 9. Wit. No. 35, Sheobaluk.
- Case of BISSERSUR  
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LOCHMUN  
BIND  
and others.
- “No. 47, *Byadhur Bind*.—Was first taken up by the Arrah police on suspicion, certain articles of silver jewellery, &c. being found in his possession and he being brother to defendant No. 46, he was then sent down to me and at once recognised and sworn to by the approvers witnesses Nos. 1, 2 and 3† as having been a member of their gang, and with them committed the dacoity in prosecutor’s house and a portion of the silver jewellery, &c. was recognised by plaintiff and the jeweller who made it (witness No. 31‡) as the property of plaintiff carried off on the night of the dacoity recognised by witness No. 35§ as an old dacoity associate, named no witnesses.
- † Wit. No. 1, Bullee Aheer,  
” ” 2, Yad Ally Khan,  
” ” 3, Mahomed Ally.
- ‡ Wit. No. 31, Mungur Sonar.
- § Wit. No. 35, Sheobaluk.
- “No. 48, *Hurdyal Bind*.—Named by the approvers|| from the very commencement as one of their leaders and the owner of one of the large boats in which they were taken, seized by the Arrah police and sent down to Barh, on arrival here was at once recognised and sworn to by the approvers witnesses Nos. 1, 2 and 3¶ admits he is the owner of the boat, but says, he sent it down under the charge of defendant No. 8 with 300 Rs. to purchase rice, recognized by the Azimgurh police and *goindahs* as a notorious dacoit, for whose apprehension warrants have been issued from Ghazipur and Azimgurh for dacoities committed in those districts vide mohurrir’s *kyfcut*, his name is also down in the list of Goruckpoor dacoits, named no witnesses.
- ¶ Wit. No. 1, Bullee Aheer,  
” ” 2, Yad Ally Khan,  
” ” 3, Mahomed Ally.
- “No. 49, *Dheep Bind*.—Seized by the Arrah police and sent down to Barh, sworn to by the approvers, witnesses Nos. 1, 2 and 3,\* recognised by witness No. 35,† as an old dacoity associate, named no witnesses.
- \* Wit. No. 1, Bullee Aheer,  
” ” 2, Yad Ally Khan,  
” ” 3, Mahomed Ally.
- † Wit. No. 35, Sheobaluk.
- “No. 50, *Bhagee Bind*.—Named by the approvers from the very commencement as one of their leaders, and as having along with defendant No. 9 broken open the doors of prosecutor’s house with an axe, was seized by the Arrah police and sent down to Barh, and at once

sworn to by witnesses Nos. 1, 2 and 3\* recognised by the Azimgurh police and witness No. 35† as a notorious dacoit, who had on one particular dacoity received a wound in the head, the scar of which witness No. 35‡ pointed out to me, was also taken up and tried for dacoity in Shahabad, but acquitted, vide

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BISSESSUR  
alias  
LOCHMUN  
BIND  
and others.

\* Wit. No. 1, Bullee Aheer,  
" " 2, Yal Ally Khan,  
" " 3, Mahomed Ally.

† Wit. No. 35, Sheobaluk.

‡ Wit. No. 35, Sheobaluk.

mohurrir's *kyfeent*, named no witnesses.

"No. 51, *Roopchand Bind*.—Seized by the Arrah police and sent down to Barh in consequence of suspicious property being found in his possession, but declared by the approvers not to have been a member of their gang, a portion of the suspicious property was, however, recognised by witnesses Nos. 30 and 31,§

§ Wit. No. 30, Luchmunpershad, prosecutor's son and the jeweller  
" " 31, Mungur Sonar, who made it, this defendant has  
therefore been committed for

knowingly receiving and retaining plundered property."

There is little difference between the points established before the Magistrate and before this Court. The defence of the prisoners there and here is of much the same complexion. They were mostly by their own account innocent travellers seized by the police for purposes of extortion or to make up a case which might gain the darogah and his officers a name, there is, however, in the defence before this Court in addition to what was said to the Deputy Magistrate a general accusation against the police and the sons of the prosecutor, of torture of the grossest description and of offers of money made to the prisoners to induce them to confess and implicate their comrades, of which I do not believe a word, the fact being that those admitted as witnesses and on whose evidence mainly the others are convicted, willingly turned approvers as would many of their fellows had more been permitted.

With regard to the first charge of specific dacoity in the house of Mooruth Lall, prosecutor, I consider it sufficiently proved that all the prisoners under trial with exception of Bijadhur No. 47, Dheep No. 49, and Roopchand No. 51, were concerned in it. The evidence of the approvers, witnesses Nos. 1, 2

and 3,|| is clear, consistent and has stood the test of several oral examinations and personal identifications of those accused. Every

thing said and disclosed was almost immediately verified by practical results not admitting a doubt of complicity or contrivance. Prisoner No. 3, was caught in the act of running away from the house robbed, his confession on the spot is fully attested before this Court and entirely corroborated by the capture of





his deposition that eighteen men had left the boats and landed between Barh and Mokameh.

Prisoner Nos. 46 to 50, inclusive, in all five persons, were apprehended in their own villages in the Arrah district, three of them No. 46, Roushun, No. 48, Hurdyal and No. 50, Bhagee had been previously named by the approvers, witnesses Nos. 1, 2, and 3,\* as concerned in the dacoity and Nos. 48 and 50 were recognised by Munsha Roy burkundaz, witness No. 14, as

having fled from him at Wulleepoor. Of the other two Bijadhur No. 47, was seized because he was brother to Roushun and lived in the same house and on searching the house an earthen pot containing some small silver ornaments was found buried in the ground. This fact was reported to Barh, when

† Wit. No. 1, Bullee Aheer. Nos. 1, 2 and 3,† all said that  
 „ „ 2, Yad Allee Khan. Bijadhur was with the gang at  
 „ „ 3, Mahomed Allee. Barh on the night of the dacoity.

The other Dheep, was seized along with several suspected Binds and admitted to the Shahabad police that he had gone down the river with Hurdyal's fleet as far as Patna only ; on his name being mentioned to the approvers† they all swore to and identified him as one of the gang concerned in the Barh dacoity.

There is no evidence in this Court of his admission before the Arrah police, but the three approvers, witnesses Nos. 1, 2 and 3,§ all repeat before me their evidence as above, identifying the prisoner personally as the man named, I do not think there is

sufficient evidence to convict Bijadhur No. 47 and Dheep No. 49, neither is there any against Roopchund No. 51, who is not identified by any of the approvers. He was apprehended in the Arrah district with Dheep and other Binds and committed because on searching his person in the Arrah jail several articles of jewellery and ornaments were discovered concealed in his clothes, of these one only, a *silver* ring of common construction, has been identified by the prosecutor's son and silversmith, and not by himself. I do not credit this identification of property and there is nothing else against Roopchand beyond general suspicion on account of the jewellery found on his person.

With regard to the 2nd count, of the indictment I find it established against

*No. 3, Bissessur Bind.*—That he was concerned in three dacoities previous to this at Barh (approver witness No. 35.||) The

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records of the Goruckpoor and Ghazipoor Courts corroborate two of these instances, in one he was acquitted at the Sessions, the other he is still in hiding for.

*No. 8, Laidur Bind.*—That he was concerned in one previous dacoity (approver witness No. 35.\*) The occurrence of this dacoity is proved by a *kyfeet* of the Ghazipoor foudaree Court, Laidur was clearly identified in this Court by witness No. 35.†

† Wit. No. 35, Sheobaluk.

*No. 10, Hurkuru Bind.*—That he was by profession a dacoit, approver witness No. 35† by whom he was clearly identified in this Court.

*No. 11, Talleymun Bind.*—That he was concerned in three named dacoities previous to this at Barh (approver witness No. 35.)§ The record of the Ghazipoor

§ Wit. No. 35, Sheobaluk.

Court proves him to be in hiding for another or fourth case in that district and he is named in a list of notorious dacoits at large, sent from the Goruckpoor district. There is a spear-wound scar on his back pointed out by the approver witness No. 35|| and verified before this Court.

|| Wit. No. 35, Sheobaluk.

*No. 13, Duljeet Bind.*—That he was concerned in one named dacoity in Ghazipoor in 1851, (approver, witness No. 35.¶) The occurrence of this dacoity is verified by a *kyfeet* from the Ghazipoor foudaree Court, Duljeet was clearly identified in this Court by witness No. 35.\*

*No. 14, Dhunnoo Bind.*—That he was concerned in a dacoity in Ghazipoor in 1850, but admitted as approver and witness. Approver, witness No. 35†, could not

† Wit. No. 35, Sheobaluk.

identify him by name before this Court, though he had before the Deputy Magistrate, but remembered his face and swore to his being an habitual dacoit. He here denies the name of Dhunnoo and says he is called Goverdhun. The name of Goverdhun is in the list of notorious dacoits at large sent from the Goruckpoor district.

*No. 15, Sheopershad Bind.*—That he was concerned in a named dacoity in the Goruckpoor district (approver, witness No. 35.‡) The occurrence of which in 1854, is verified by a *kyfeet* from the Goruckpoor foudaree Court. His name is also in the list of notorious dacoits at large sent from that district.

*No. 22, Ramburn Dosadh.*—That he was concerned in a previous named dacoity (approver, witness No. 35.§) The occurrence of which in 1851, is verified by a *kyfeet* from the

§ Wit. No. 35, Sheobaluk.

witness No. 35.§) The occurrence of which in 1851, is verified by a *kyfeet* from the

Ghazipoor foudaree Court was clearly identified in this Court by witness No. 35.

*No. 23, Doolar Bind.*—That he was concerned in a named dacoity in Goruckpoor (approver, witness No. 35\*) The occurrence of which in 1854, is verified by a *kyfeet* from that zillah. That he was imprisoned in the Arrah jail for five years for highway robbery in 1848, was identified by name in the Deputy Magistrate's Court by witness No. 35,† but before this Court only personally.

Wit. No. 35, Sheobaluk. *No. 26, Sheodyal Bind.*—That he was concerned in a named dacoity in Goruckpoor (approver, witness No. 35,‡) a *kyfeet* of the Goruckpoor foudaree Court verifies the occurrence of this dacoity in 1855, and acquittal of Sheodyal by the Magistrate on charge of being concerned in it. He is clearly identified before this Court by witness No. 35.§

‡ Wit. No. 35, Sheobaluk. *No. 27, Sheoburt Bind.*—That he is an habitual dacoit, that his father and brother are both in jail for dacoity in the Azingurh district, approver, witness No. 35.|| He was clearly identified in this Court by witness No. 35.¶

§ Wit. No. 35, Sheobaluk. ¶ Wit. No. 35, Sheobaluk. *No. 32, Bhondla Bind.*—That he is an habitual dacoit (approver, witness No. 35,\*) clearly identified before this Court by witness No. 35.†

\* Wit. No. 35, Sheobaluk. † Wit. No. 35, Sheobaluk. *No. 34, Khursen Bind.*—That he was concerned in seven previous named dacoities ; that he is now in hiding as an escaped felon (approver, witness No. 35.‡) A *kyfeet* of the Ghazipoor foudaree Court verifies the fact of his having been convicted of a dacoity in 1853, and sentenced to seven years' imprisonment, as also of his having broken jail and being now missing. He himself admits this last fact.

‡ Wit. No. 35, Sheobaluk. *No. 35, Ajoodhia Pershaud.*—That he was tried as being concerned in the Baloopoor dacoity in 1853, in Ghazipoor for which Khursen prisoner No. 34, was sentenced to imprisonment for seven years but acquitted, vide misl of Baloopoor dacoity case with record. He was now apprehended in the same *dinghee* with Khursen.

*No. 37, Bullee Bind.*—That he was concerned in one named dacoity in the Ghazipoor district (approver, witness No. 35.§) The occurrence of this dacoity in 1849, is verified by a *kyfeet* from Ghazipoor. Bullee was also imprisoned in the Arrah jail

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1857. for two and a half years from 1844, on conviction of theft and burglary under the name of Bulram, the identity of Bullee and Bulram was sworn to before the Deputy Magistrate by Khyrat Ally burkundaz of the Arrah jail. He has been clearly identified in this Court by witness

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No. 35.\*

No. 38, *Jootun Bind*.—Was concerned in a named dacoity in Goruckpoor (approver, witness

† Wit. No. 35, Sheobaluk.

No. 35.†) The occurrence of

this dacoity in 1855, is verified by a *kyfeet* from Goruckpoor.

‡ Wit. No. 35, Sheobaluk.

Has been clearly identified in this Court by witness No. 35.‡

No. 39, *Goorshukae Bind*.—Was recognised by approver,

§ Wit. No. 35, Sheobaluk.

witness No. 35,§ as an habitual dacoit and son-in-law of one

Suhoy, a notorious dacoit in the Azimgurh jail.

No. 41, *Mohun Bind*.—Was concerned in a named dacoity in

|| Wit. No. 35, Sheobaluk.

Ghazipoor (approver, witness No. 35.||) The occurrence of this

dacoity in 1846, is verified by a *kyfeet* from Ghazipoor.

One, of his father's name Ulliar, was imprisoned in the Ghazipoor jail for four years in 1850. (Record of case of dacoity in house of Keenooram sent from Ghazipoor soujdaree.) He has been

¶ Wit. No. 35, Sheobaluk.

clearly identified in this Court by witness, No. 35.¶

No. 42, *Beharee Bind*.—Was concerned in three named dacoities (approver, witness No.

\* Wit. No. 35, Sheobaluk.

35.\*) The occurrence of two of

these in 1851 and 1855, is verified by *kyfeet* from Ghazipoor and Goruckpoor. The record of the case of dacoity in house of Keenooram shews that one Beharee was supposed to be concerned in that also. Has been clearly identified in this Court by

witness, No. 35.†

† Wit. No. 35, Sheobaluk.

No. 45, *Taleen Bind*.—Was concerned in the dacoity at Baloopoor in 1853, for which Khur-sen was imprisoned but acquitted. His name and parentage are recorded in the Baloopoor dacoity misl sent from Ghazipoor.

‡ Wit. No. 35, Sheobaluk.

Witness No. 35,‡ identified him before the Deputy Magistrate

but failed to do so by name before this Court.

No. 46, *Roushun Bind*.—Was concerned in one named pre-

§ Wit. No. 35, Sheobaluk.

vious dacoity (approver, witness No. 35.§) The occurrence of

which in 1855, is verified by a *kyfeet* from Goruckpoor. He was clearly identified in this Court by witness, No. 35.

No. 47, *Bijadhur Bind*.—Was concerned in one named pre-

|| Wit. No. 35, Sheobaluk.

vious dacoity (approver, witness No. 35.||) The occurrence of

which in 1851, is verified by a *kyfeet* from Ghazipoor. He

\* Wit. No. 35, Sheobaluk. was clearly identified in this Court by witness, No. 35.\*

No. 48, *Hurdyal Bind*.—Was concerned in two previous named dacoities (approver, witness No. 35.†) His name is included in the list of notorious dacoits at large furnished from Goruckpoor and among those suspected of the dacoity in Keenooram's house in Ghazipoor. He is clearly identified in this

† Wit. No. 35, Sheobaluk. Court by witness, No. 35.‡

No. 50, *Bhagee Bind*.—Was concerned in two previous named dacoities (approver, witness No. 35,§) a *kyfeet* drawn from the misl of one of these dacoities received from Shahabad shows that Bhagee was acquitted by the Sessions. The occurrence of the others in 1849, is verified by a *kyfeet* from Ghazipoor. He is clearly identified in this

|| Wit. No. 35, Sheobaluk. Court by witness, No. 35||.

The identification by the approver, witness No. 35,¶ was carefully tested in this Court.

¶ Wit. No. 35, Sheobaluk. The prisoners were called up by numbers, not names, two and three and four at a time from different part of the line with the greatest irregularity, yet in all but six instances Nos. 14, 16, 23, 45, 49 and 51, he named each man without hesitation. His evidence was that of one quite confident in his own truth and knowledge, he was a notorious dacoit released from the Goruckpoor jail on account of incurable lameness which affliction prevents his standing up for more than a few minutes at a time.

With regard to the third count implicating prisoners Nos. 4 to 19, (No. 20, is sick and unable to attend), No. 47 and No. 51, it is charged against Nos. 4 to 19, that a bamboo *lathee*

\* Wit. No. 9, Nirput Singh. belonging to witness No. 9,\* was found in one of their boats.

This *lathee* is sworn to by witnesses Nos. 4† and 9.‡ There were several other *lathees* of the

† Wit. No. 4, Jogu Roy. same colour and appearance found in the same boat, I do not

‡ Wit. No. 9, Nirput Singh. credit the identification. Nos. 47

and 51 are charged on this count with having in their possession silver ornaments and coins sworn to by witnesses Nos. 30

§ Wit. No. 30, Luchmun Purshad. and 31,§ and by the prosecutor. The scraps of silver chain

„ „ 31, Mungur Sonar. and an old silver ring, a four-anna piece and two *kuldar* Rupees are not, in my opinion, capable of identification. The evidence on this point is not sufficiently credible.

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With regard to the above remarks, I convict prisoners Nos. 3, 8, 10, 11, 13, 14,\* 15, 22, 23,\* 26, 27, 32, 34, 35, 37, 38, 39, 41, 42, 45,\* 46, 48 and 50, in all twenty-three persons, of the 1st and 2nd counts of the charge and referring their case to the Nizamut Adawlut recommend that they be transported for life as habitual hardened dacoits. I convict prisoners Nos. 4, 5, 6, 7, 9, 12, 16, 17, 18, 19, 21, 24, 25, 28, 30, 33, 36, 40, 43 and 44, in all twenty persons, of the first count of the indictment and sentence them to fourteen years' imprisonment each with labor in irons, but delay the issue of the warrant till the disposal of this reference regarding Nos. 38 and 10, &c. by the superior Court, No. 47, though recognised by witness, No. 35,† as an old dacoit is not sufficiently identified with this case to be here punished, he is accordingly acquitted with order to the Magistrate not to release without sufficient security for his good behaviour for three (3) years.

Nos. 49 and 51, are acquitted and ordered to be released. They have not been clearly identified by any of the approvers, and I discredit the evidence as to identity of the property found on them.

The silver *punkah* and spear will be restored to the prosecutor. The boats and the general property found on them should I think be sold and the amount credited to Government, all other property to be restored to the persons on whom it was found. I have not enforced the provisions of Act XVI. of 1850 against the prisoners, because there is no reliable evidence of what property was stolen from prosecutor's house.

With regard to the three approvers, witnesses Nos. 1, 2 and 3,‡ admitted as informers by Mr. Vincent, I see that their evidence has been taken on oath before him. This does not in any way vitiate the proceeding, but Mr. Vincent's attention will be called to the Circular of the 3rd January, 1854, prohibiting the practice. The three witnesses have fulfilled the purpose of their admission as informers, but pending the trial or death of Bhugwan No. 20, of the calendar cannot be immediately released. They are to be returned to the custody of the Deputy Magistrate of Barh till further orders.

This case has been most ably managed by Mr. Vincent, whose great aptitude for such enquiries is manifested throughout. The patience and ability shown by him in tracing out and adopting each item of evidence to each individual dacoit, and in putting

† Wit. No. 1, Bullee Aheer.

„ „ 2, Yad Allee Khan.

„ „ 3, Mahomed Allee.

3,‡ admitted as informers by Mr. Vincent, I see that their evidence has been taken on oath before him. This does not in

the whole before the Sessions Court in the form he has done deserves the highest praise. I trust the Court will make honorable mention of Mr. Vincent's name to the Government as deserving of special notice in the conduct of the dacoity case, which has not had its parallel in these parts since December, 1820, when one hundred and thirty-two dacoits of the Budhik caste were convicted and published for a dacoity with murder in nearly the same spot in the thannah of Duriapoor.

The police officers especially Bullakee Lall, darogah of Barh, and Munsha Roy and Hursuhoy burkundazes deserve the greatest credit. They have, I hear, been already rewarded through the Superintendent of Police, as also Abdool Kurreem tuhsildar of Mokameh.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This case is referred to this Court as to the prisoners Nos. 3, 8, 10, 11, 13, 14, 15, 22, 25, 26, 27, 32, 34, 35, 37, 38, 39, 41, 42, 45, 46, 48 and 50.

The Sessions Judge recommends that the above twenty-three persons "be transported for life as habitual hardened dacoits."

The Sessions Judge states "I convict prisoners Nos. 4, 5, 6, 7, 9, 12, 16, 17, 18, 19, 21, 24, 25, 28, 30, 33, 36, 40, 43 and 44, in all twenty persons, of the first count of the indictment and sentence them to fourteen years' imprisonment with labor and irons."

With reference to this conviction we have to remark that as the Sessions Judge *has sentenced* these prisoners, it is not in our power under Act XXXI. of 1841, to enhance the punishment of that sentence. We would at the same time observe that the precedent of Gopal Dolye's case, Nizamut Adawlut Reports, 25th October, 1852, page 613, and the ample proof on the record, in this case, that the prisoners sentenced by the Sessions Judge *belonged to a gang of dacoits* would have warranted his referring their cases also to this Court, with a recommendation that they should be transported for life, under Act XXIV. of 1843.

None of the prisoners have appealed.

The narrative of the Deputy Magistrate, Mr. Vincent in Column 13 of the Calendar gives a lucid statement of the operations of the police, of the facts which came under his own cognizance, and of the successive links in the chain of evidence which those facts connected and completed.

We therefore transcribe it in this place:—

"A dacoity was committed on Tuesday night the 2nd of December, 1856, in the house of one Mooruthlall, a resident of the village of Nowadah. The dacoits broke open the doors, entered the dwelling with lighted torches, robbed the women of the house of the jewellery they had on at the time, and then breaking open a chest ransacked its contents, carrying off plun-

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der valued altogether (by plaintiff) at Rs. 905, 13 ans. The villagers assembling in force, the dacoits were obliged to retreat, and must have been closely pressed as they abandoned a portion of the booty, consisting of a large silver *punka* handle and a silver spear valued at 77 Rs. These articles had been seen by the villagers and prosecutor's servants in the hands of two of the robber-leaders, viz. defendant No. 4 'Bheekaree' Choubey and defendant No. 5, 'Keenoo' Choubey."

"Whilst precipitately retreating, one of their number (defendant No. 3) fell into a concealed well, from which he was after some time extricated. He (no doubt under fear of ill-treatment) admitted he was one of the gang of dacoits, and that his comrades had gone down the river in boats."

"The darogah of Barh with a police force at once started in pursuit and overtook the main body of the dacoits in four hours at a village called Mokameh, (vide Map\* of this case) where aided by a large body of well-armed villagers, he succeeded in capturing twenty-two of them, on Wednesday morning about 9 A. M. in two boats (and two *suringhas*) laden with the sand so as to appear sugar boats; they at first were inclined to resist, but awed by a superior force, at last submitted and were at once disarmed; their weapons were twenty-seven heavy clubs, a sword and two axes. Amongst the clubs was found one stick of a totally different appearance, which was at once recognized by plaintiff's servants as the property of their master, and subsequently claimed and sworn to by prosecutor."

"Of the twenty-two thus arrested, two were admitted as approvers (witnesses Nos. 1 and 2,) and three (3) were subsequently released from want of proof against them. The remainder seventeen in number are defendants Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 in this case."

"The two approvers declaring that the remainder of the gang had gone on in *suringhas* or canoes, with all the plunder, the pursuit was renewed; one of the approvers (witness No. 1) Bullee Aheer (or Goalah) by name was (at the recommendation of Bheekaree Choubey, defendant No. 4, who at that time confessed) made over to Munsha Roy, burkundaz, who at once started, and the following morning Thursday, 4th December, they succeeded in capturing two *suringhas* and thirteen dacoits, viz. defendants Nos. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33. Amongst these captured dacoits was a man named "*Mahomed Ally*" who, on being arrested, professed his willingness to assist in the capture of the remainder; he, therefore, was also allowed to turn approver and is now witness No. 3. From information obtained from him Munsha Roy succeeded that day in capturing nine (9) more dacoits in three *suringhas*, at a place called Wul-

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\* See page 36.





leepoor; amongst these was one of the robber-leaders, a man named "*Khursen Bind*," who was taken sword in hand; he subsequently admitted he had broken the Ghazipoor jail and has since been recognised as one of the greatest dacoits in India. This man when overtaken, was seen to throw a bundle into the river, which no doubt contained the plundered property. Of these nine, one subsequently died of fever, i. e. a man named Gopaul Bind. The remainder are defendants Nos. 34, 35, 36, 37, 38, 39, 40 and 41, all these men, viz. from defendant No. 21 to defendant No. 41 twenty-one in number, were caught by Munsha Roy, whilst escaping down stream in open boats or *surings*."

"Meanwhile four more dacoits were captured by the villagers and chowkeydars of a place called Poonaruk; these men had left their boats, and were hiding in *rukur* fields, but their forbidding appearance arousing suspicion they were arrested and brought to the thannah, where they were at once recognised and named by the approvers as belonging to the gang; they are defendants Nos. 42, 43, 44 and 45."

"The whole gang was calculated by the approvers to consist of sixty or seventy men; the names, therefore, of those as yet unapprehended were forwarded to the Magistrate of Shahabad, in whose district their houses were; and through his active co-operation, six more dacoits were arrested, and sent down, these are defendants Nos. 46, 47, 48, 49, 50 and 51. Amongst these are three notorious dacoits and the leaders of this expedition also, viz. *Roushun Bind* defendant No. 46, *Hurdyal Bind* defendant No. 48 and *Bhagee Bind* defendant No. 50."

"As these dacoits were members of an up-country band, residents of Goruckpoor, Ghazipoor, Azimgurh and Shahabad, it was absolutely necessary to admit some of them as approvers, to name and identify the others. This was accordingly done under Regulation I. of 1829, and those men who had materially assisted in the capture of the others were so admitted, viz. *Yad Ally Khan*, *Bullee Aheer* and *Mahomed Ally*. These witnesses most clearly detail every incident connected with this dacoity expedition from the day they left '*Uthrowlee*,' a village near Buxar, till they committed this dacoity near Barh. From information obtained from these men, communications were addressed to the Magistrates of Ghazipoor, Goruckpoor, Azimgurh and Shahabad, who lost no time in sending down experienced police officers and dacoit *goindahs*, who at once recognized many members of the captured band, as notorious dacoits in their own districts; some of whom had broken jail, and others for whose apprehension rewards had long been offered. The chief witness was a man named Sheobaluk Aheer, who had been a notorious dacoit and was imprisoned as such in the Goruckpoor jail, but meeting with an injury, which lamed him

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for life, he was released by the orders of the Sudder Court at Agra, and has ever since been employed in the Upper Provinces as dacoit *goindah*. This man's recognition of the dacoits captured at Barh was highly interesting and most satisfactory; he proving his statements by pointing out different marks of wounds received by the dacoits on former occasions. His statements were corroborated by *kyfeuts* from the different districts in which he declared these men had committed dacoities."

The circumstances set forth by Mr. Vincent in the above clear narrative are fully corroborated by the direct and circumstantial evidence upon the record. The prisoner No. 3, from whose statement to the villagers and to the darogah, immediately after the dacoity, the first clue to the other prisoners was obtained, admits that he suffered from night blindness, which led to his dropping into the well, on the flight of his companions. Thus his confession was a natural act in order to obtain his release from his perilous position in the well. The fact of that confession being so immediate, while it supports its trustworthiness, was the means which enabled the darogah (whose station was close) to act at once, both by land and water. The track followed, the localities where the respective prisoners were seized, their mode of conveyance, and the character and contents of the boats, exactly corresponded with the statement given by this prisoner No. 3, and the facts elicited thereby. Next the particulars mentioned by the confessing prisoners Nos. 10 and 34, tally entirely with the independent evidence for the prosecution, viz., as to the boats, their positions, the pretended load of sugar, the value of the plundered property, (ornaments easily carried in small boats and disposed of,) the relinquishing the silver *punkah*, and silver spear, the manner in which the three leaders departed first in the three *dinghees*, the places stopped at in the boats, the throwing over the bundle by prisoner No. 34, the throwing over some *lattees* and the finding of many others in the boats, the *lattee* wounds deposed to by the witnesses Nos. 6, 7, 8 and 9, as inflicted by the dacoits, the names and residence of the leaders and others, the selection of prosecutor's house by prisoner No. 34, (who had leased land near the village), the fact of the knowledge by prisoner No. 34 of prosecutor's absence at Patna, and of women and servants only remaining on the premises, the manner of the resistance to the police by prisoner No. 34, and his having a sword, and the finding of a *tanghee* and that instrument having been used in opening the door by the dacoits. Further, we have the separate apprehension of separate parties of prisoners at different places and under different circumstances, by the darogah, the burkundazes and the villagers of Poonaruk. Again there is the fact of the large force brought by the tehsildar of Mokameh inducing the prisoners to bring to when hailed, and the confessions before the tehsildar. Finally,

there is the entire connection shewn among all the dacoits. In short, the independent evidence, and confessions agree as to all the main facts, while there was no time, no means, and no inducement, for collusion.

The evidence which affects the guilt of each individual has been fully given by the Sessions Judge and Deputy Magistrate. It is detailed in the letter of reference of the Sessions Judge, and correctly set forth in regard to each of the prisoners whose case is under reference to this Court. It would therefore be needless repetition to recapitulate it. We would add, however, that the confessions of prisoners Nos. 10 and 34, were perfectly voluntary. The confession of the former prisoner No. 10, implicates prisoners Nos. 3, 8, 13, 22, 27, 34, 37, 42, 45, 46, 48 and 50; the confession of the latter No. 34, implicates prisoners Nos. 3, 14, 15, 23, 35, 45, 48 and 50. The facts stated in those confessions are most fully supported by independent evidence, and are facts of which the confessing prisoners could not have had collusive knowledge. Further none of the prisoners substantiate their defence or give satisfactory accounts for the circumstances attending their apprehensions.

We therefore convict all the prisoners whose cases have been referred, viz. Nos. 3, 8, 10, 11, 13, 14, 15, 22, 23, 26, 27, 32, 34, 35, 37, 38, 39, 41, 42, 43, 46, 48, and 50, (twenty-three persons) and sentence all (except No. 34) to transportation for life beyond sea. In respect to No. 34, it is clear that he was a *leader and planner* of this dacoity; and Nos. 46, 48 and 50 were also leaders. We have carefully considered the case of prisoner No. 34, with reference to Clause 2, Section 4, Regulation LIIF. of 1803. We are of opinion that though in the present case there are no circumstances of peculiarly aggravated criminality, yet several of the servants of prosecutor and the chowkeedars were beaten with clubs and *wounded*, and we find that this prisoner has *heretofore* been convicted of *dacoity, with personal violence*. Indeed it is proved that he broke the Ghazipoor jail, when he was undergoing his sentence for that crime. As therefore the present crime of which the prisoner has been convicted is a *repetition of the crime*, as described in law above quoted, i. e. dacoity with "wounding and personal violence" and the prisoner was a "*leader*" in the Ghazipoor case, and *also in this*, we sentence him Kursen Bind prisoner No. 34, to be hung.

We quite concur with the Sessions Judge in his commendation of the proceedings of Mr. Vincent, and of the manner in which that Deputy Magistrate has submitted the case. We would only observe on this point that although the case is sufficiently proved as it stands, it would have been more complete if the evidence of Mr. Vincent had been taken as to the marks of wounds, which he states that witness No. 35, deposed to have been inflicted when those prisoners were engaged with that

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The Court also consider the promptitude of the darogah, and the proceedings of Munsha Roy, and the other burkundazes deserving of reward. The conduct of the tehsildar of Mokameh, Abdool Kureem, was most praiseworthy. The overpowering force he brought to the aid of the police, the boat men he opportunely supplied, and the personal activity he shewed throughout, (for instance in regard to satisfying himself that the boats were laden with sand and not with sugar,) afford a striking example of the due discharge of Zemindaree duties; and the result shows how the co-operation of the leading classes with the police can secure the discovery of crime and the due punishment of criminals.

A copy of these remarks is to be sent to the Hon'ble the Lieut.-Governor for consideration and such further orders as His Honor may deem necessary in regard to the preceding paras.; with extract of the letter of the Sessions Judge in regard to the conduct of the Deputy Magistrate, the police, and the tehsildar of Mokameh.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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GOVERNMENT

*versus*

MOKEEM CHOWKEEDAR (No. 1,) AND KHODA-  
BUKSH (No. 2.)

Midnapore. CRIME CHARGED.—Dacoity in having attacked the house of the prosecutor Binud Mundul and plundered therefrom property to the value of Rs. 33-13.

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Committing Officer.—Mr. G. Bright, Magistrate of Midnapore.

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CHOWKEEDAR  
and another.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 22nd April, 1857.

*Remarks by the Officiating Sessions Judge.*—At midnight of the 2nd February, the house of the prosecutor at Hoseinabad in the suburbs of the town of Midnapore, was attacked by some ten or twelve armed dacoits, and property valued at Rs. 33-13 plundered. On the 3rd February, Dirasut Ullah, at that time the darogah of the city thannah, reported that, at 10 P. M. of the previous night, prisoner No. 2, Khodabuksh chowkeedar told him that he and the prisoner Mokeem No. 1, had seen six or seven suspicious looking armed men going to the eastward; that he, the darogah, had immediately conveyed this information.

tion to the Magistrate obtained from him the assistance of some of the jail guard, and had taken other means for keeping a sharp look out.

The dacoity was nevertheless perpetrated as above stated; the police offered no adequate opposition, and the gang of dacoits made their way through them, and escaped. The subsequent enquiry led to no satisfactory result, which is very discreditable to the darogah, if it does not, under the circumstances, tend to throw on him a graver suspicion.

The darogah was transferred to another thannah, and Mungul Pershad Singh darogah appointed in his place. This officer immediately set about making enquiries, and reasonably concluding that Khodabuksh chowkeedar who had told so much to the former darogah, could give more information if he chose, sent for him. On the plea of sickness this man evaded the order, indeed abused the burkundaz sent with it and was

only persuaded to attend by Komeeroodeen Mullick, witness No. 6.\* His sickness was shown

to have been feigned.

The darogah seems to have been active in making enquiries in all directions, and in restoring confidence in the police, which had been much shaken by similar recent robberies; in fact, the native population had been considerably alarmed in consequence. In pursuance of orders from the Commissioner of Police these enquiries were vigorously prosecuted, and on the 25th March, the deposition of the prosecutor was again taken down, as also

those of witnesses† Kureem  
 † Wit. Nos. 18, pages 43 to 46. Buksh and Sadhoo Khan, on the  
 „ „ 19, „ 47 to 52. strength of which, the prisoners

Mokeem and Khodabuksh chowkeedars were arrested and on the same day confessed before the darogah to the following effect. That he “Khodabuksh” had become acquainted with “sepoys Munsoor Khan” and “Punchum Singh” and visited them in the Regimental lines; that they enquired of him if there were any house where they could obtain plunder, to which he replied in the affirmative, and told them to come next day at 5 P. M. that he informed the darogah of what had passed who said, “bring them to commit it.” He goes on to say, that he told the aforesaid sepoys to come, that they assented, and that having left with them Mokeem prisoner No. 1, as their guide, he gave information to the darogah, who deputed him with the jemadar and others of the police to Koorer Mullick’s house where they stationed themselves at 10 P. M., that he and Mokeem then went to the rendezvous of the dacoits; that they reached the prosecutor’s house at midnight, just as the moon was setting; that the dacoits lighted a torch, and broke into the house; that he and his comrade Mokeem then

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called the jemadar, when a fight ensued between the police and dacoits, in which confessary assisted, and wounded one of the dacoits on the back as he ran off; that he does not know the five men who accompanied the aforesaid sepoy. Mokeem prisoner No. 1, in his confession before the police states that one day in Maugh at 5 P. M. Khodabuksh prisoner No. 2, taking him to the thannah had a private conference with the darogah, to which he, Mokeem, was not admitted; that the darogah then called him aside and said, "Go with Khodabuksh, who will tell you what to do." That after leaving the thannah, Khodabuksh prisoner No. 2, said, "Munsoor Khan" sepoy is my friend I am going to see him, come! that they accordingly went to the lines and Khodabuksh entered a house with "Munsoor" and "Punchum Singh" and had some conversation with them, while he remained outside; that on his coming out, he took him "Mokeem" to the house of his brother-in-law, a baker, name unknown, where they remained till 7-30 P. M.; that they again returned to the lines, Khodabuksh explaining to him on their way that the darogah had told him to manage and catch some sepoy in the act of committing a dacoity and that he would do so that day; that the aforesaid sepoy and five others then joined them and they left the lines and came to near Runzoo butcher's house, where Khodabuksh left them secretly intimating to Mokeem his intention of going to the thannah; and directing him to take the dacoits to the maidan north of his village. He did so, and got to the place appointed before 11 o'clock P. M. That Munsoor Khan then told Mokeem to call his friend; that he went and found Khodabuksh with the police jemadar and others at Kooer Mullick's, and told him he had come for him; that the jemadar asked him how many dacoits there were and he replied seven; that he and Khodabuksh then left to join the dacoits; that he Mokeem parted from prisoner No. 2, on the road and went to eat his dinner, Khodabuksh proceeding to where the dacoits had assembled. Examinant continued that after his meal he joined the police party at Kooer Mullick's, and shortly after heard the noise of the attack of the dacoits; that he should not be able to recognize the other five sepoy; that Khodabuksh has a mistress, one Peyaree of Wuleegunge, who placed some ornaments in the house of her aunt, the mother of Ruggoo Singh, a burkundaz of the jail.

The prisoner No. 1, repeated his confession to the Magistrate.

Khodabuksh pleaded "*not guilty*" before that officer, named witnesses in his defence, and added that he heard dacoits consulting about the robbery and informed the darogah.

These confessions are duly proved by the attesting witnesses to have been voluntary, and receive confirmation from the evi-

dence of witnesses Nos. 18 and 19, on the strength of which they were arrested. These witnesses depose that Khodabuksh had warned them that a dacoity would take place saying a spy had given information of it at the thannah; that at about 10 or 11 P. M. a jemadar and burkundazes of the police, accompanied by Khodabuksh, came and took up a position at Kooer Mullick's house, where deponents were; that Mokeem came and told Khodabuksh, Your friends are calling you, and replied to the jemadar that there were seven dacoits armed with clubs and swords. That the prisoners Mokeem and Khodabuksh then left them; and not long after the attack in prosecutor's house was made.

It is a remarkable fact that one of these witnesses Sathoo Khan No. 19 was cited by prisoner Khodabuksh in his defence before the Magistrate. The direct evidence is, that of three eye-witnesses,\* who stated on the second enquiry by the police;

\* Wit. Nos. 1, page 11 to 15, and have since sworn both before  
 " " 2, " 16 to 18, the Magistrate and myself that  
 " " 3, " 19 to 22. they recognised the prisoners in  
 the act; that they were arrested

that night by the police, that it was notorious they were concerned in it, and thus account for their silence on the occasion of the first enquiry.

I can quite understand that they feared the consequences of denouncing these men who are connected with one or more of the police; and no doubt have influential friends, three vakeels having been entertained for their defence.

There is no enmity whatever between these witnesses and the prisoners that they should falsely accuse them, they have never given evidence before, and are poor unsophisticated villagers; and when some confidence in the police was restored and encouragement given, their reluctance was overcome. There is no sufficient reason then to discredit these witnesses.

The prisoner No. 2 is proved† to have been absent from his post on the night of the dacoity.

† Wit. No. 25, page 58. The prisoners in their defence  
 " " 26, " 59. before this Court make vague  
 " " 27, " 60. and general averments that they

were threatened and maltreated. Not one, however, of the witnesses, whose evidence has been heard in their defence in any way exculpates them from the charges, or gives a hint that any oppression or torture was used to extort their confessions. One of the vakeels for the prisoners intimated that Peigumbur Buksh No. 33 was an important witness for the defence, he was not, however, forthcoming: Kooer Mullick, witness No. 32, however, adduced to support the same line of defence, was produced, but stated nothing favorable to the prisoners. It is moreover worthy of remark that the said Peigumbur Buksh was not cited by

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1857. Khodabuksh in his defence before the Magistrate, but only after he had been committed to take his trial, citing this man appears to have been altogether an after-thought.

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Taking into consideration the confession of prisoner No. 1 both before the police and Magistrate, and that of No. 2 before the police, corroborated as they both are by the evidence of witnesses,\* their undoubted knowledge that a dacoity was contemplated, such knowledge and

\* Wit. No. 18, page 43 to 46. the transpiration of the names  
" " 19, " 47 to 52. of Munsoor Khan and Punchum

Singh being unaccountable if these confessions are disbelieved; and finally the evidence of the three eye-witnesses, there is no doubt left on my mind that the prisoners procured by their counsel the perpetration of this dacoity, and were accomplices in it; their guilt is proved in my opinion by legal evidence. Only in the past month two chowkeedars were convicted by me of a similar offence and a severe example appears to me absolutely necessary to deter other policemen following in the same steps, and to restore a sense of safety to the inhabitants of this town. Munsoor Khan is not before this Court, but the Magistrate's proceedings show that he gave a ready answer to, and reason for, Khodabuksh's accusation. Should this dacoity have been perpetrated by other up-country men, and there are many about, the prisoners have accused honest men falsely; otherwise they have enticed those who were bound to preserve peace and order to forget a solemn duty and commit a heinous crime against the community. In whichever light their conduct is viewed, it has been highly criminal, and I would recommend that the prisoners be transported for life under the provisions of Regulation III. 1805.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This dacoity occurred on the 2nd February. The next day the prosecutor deposed to the police, that he had not been able to recognise any of the dacoits, and suspected none. The then darogah, Derasutoola, reported that he could not find out who committed the crime.

The present darogah, Mungulpershad, next took up the case. The first evidence tendered to this darogah is of the 25th of March, viz. the prosecutor's second information of the dacoity. The prisoners confessed to the darogah on that date, Prisoner No. 1 also to the Magistrate. Prisoner No. 2 admitted to the Magistrate having heard of the dacoity. Their confessions are of a character to shew that they went to the dacoity for the purpose of aiding the darogah, (and at his instance) to seize the dacoits in the act, rather than confessions which can be taken to shew that they went there with the direct intent of robbery and plunder. Both prisoners deny to the Sessions Judge that their confessions to the police were voluntary.

Looking upon the confessions in the light above stated, (and we do not think they admit of any other even if regarded in the terms as given by the Sessions Judge, and independently of other circumstances throwing doubt upon them,) we cannot consider that they would sustain a conviction against the prisoners.

To proceed then to the direct evidence. There are four alleged eye-witnesses, Nos. 1, 2, 3 and 4, and two others, Nos. 17 and 18, whose names are entered in the column of circumstantial evidence, but who say they recognised the prisoners in the act; but that the prisoners went to the dacoity with the Jemadar's party of the police.

We distrust this evidence, for it is contradictory and doubtful on essential points. For instance there are the following material *contradictions*. Witness No. 1, says *nothing* to the police of prisoner No. 2, having a *lattee*. To the Magistrate he says that prisoner *had* a *lattee*. To the Sessions Judge he says, (what he had never said before,) that he saw the prisoner No. 2, strike the prosecutor. Witness No. 2, says to the police that he saw prisoners Nos. 1 and 2 at the dacoity. To the Magistrate he says that prisoner No. 1 had a torch and No. 2 a *lattee*, which he (prisoner No. 2) was flourishing about. Witness No. 3 says to the police that prisoner No. 1 had a torch, and No. 2 was with him: nothing more. To the Magistrate he says that prisoner No. 2 had a *lattee*. To the Sessions Judge this witness adds that prisoner No. 2 struck a burkundaz with a *lattee* on the head. Witness No. 4 says to the police that he saw prisoner No. 2 by a torch. To the Magistrate he states, he recognised both prisoners Nos. 1 and 2; the former with a torch, and the latter with a *lattee*.

Again the witness No. 1 states to the Magistrate that witnesses Nos. 2, 3 and 4, *spoke of* having *recognised* prisoner No. 1. This witness at the Sessions, says that *he told* witnesses Nos. 2, 3 and 4 of the recognition of both prisoners. He adds that prisoners were both together and striking prosecutor. This witness, however, admits that he never mentioned this recognition to the chowkedar or sirdar of his own village; but he did to the prosecutor. Witness No. 2 says to the Magistrate that he mentioned the recognition of prisoners Nos. 1 and 2 to witnesses Nos. 1 and 2 only. To the Sessions Judge he says that he did *not* mention the names of prisoners Nos. 1 and 2 to any one, as all saw them. He then says, witnesses Nos. 1, 3 and 4 mentioned to him their recognition of prisoners Nos. 1 and 2. Witness No. 3 on this point says to the Magistrate that witnesses Nos. 1, 2 and 4, and prosecutor, and his brother spoke of having recognized prisoners Nos. 1 and 2, and that he also spoke of it to them. To the Sessions he says he did *not* mention this recognition to any one, and that the prosecutor did

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*not say* he recognized any one. His subsequent plea, that this was a mistake of his, does not clear away the contradiction for he repeats "Prosecutor did not tell me of the recognition, I told him." Witness No. 4 says to the Magistrate that he mentioned the recognition to witnesses Nos. 1, 2 and 3, and to no one else. Prosecutor to the Sessions Judge says, he mentioned the recognition of prisoners Nos. 1 and 2, to witnesses Nos. 2 and 3, and *they said nothing*. Then he says they did say they had recognized them. To the Magistrate, prosecutor says he mentioned his recognition of prisoners to witnesses Nos. 1, 2, 3 and 4. The evidence of the above four witnesses is inconclusive and doubtful, for they seem to have done nothing as to mentioning the fact of their recognition of these prisoners to any one, not even their own village policemen, from the 3rd February to their examination at the end of March. Again, there are traces of a tutored tale in the order, and detail of the testimony of these witnesses before the Magistrate and Sessions Judge, as to prisoner No. 1, with his torch and No. 2, with his *lattee*, and as to the other incidents of the dacoity; such as, the fight with the police, the mutual retreat of both parties, and the prosecutor's movements. The evidence of witnesses Nos. 18 and 19, merely shews that the prisoners went with the police to the spot; and that the jemadar and the prisoners were as fully cognizant of the dacoity as the prisoners were. Further, the evidence of these witnesses is also totally inconsistent with that given by witnesses Nos. 1, 2, 3 and 4, for while the latter witnesses depose to the prisoners accompanying the police, the former depose that the prisoners were apprehended in the act of committing the dacoity, and taken off by the jemadar to the thannah. In short we are of opinion that although there may have been a dacoity and that dacoity committed by sepoys or up-country men, and the police possibly more or less present, and beaten back, the evidence is too doubtful to convict these two prisoners of being the real dacoits. We therefore, order their immediate release.

We quite concur in the remark of the Magistrate in Column 13 of the Calendar, that the conduct of the police was disgraceful throughout. We do not think the preparation of this case shews it in an improved light.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

KEAMOODEEN (No. 21,) BABUROOLLA (No. 22,) JHURROO (No. 23,) MONIROODEEN (No. 24,) ADDOO (No. 25,) REDOY KISHEN DOSS ALIAS ABDOOL GAFOOR ALIAS ABDOOL KHAN (No. 26,) PORUSHOOLLA (No. 27,) RAMCHURN SIRKAR (No. 28,) EMAMOODEEN (No. 29,) AND HOSSEIN (No. 30.)

Backergunge.

CRIME CHARGED.—1st count, wilful murder of Kooshye and Kobaye; 2nd count affray attended with the culpable homicide of Kooshye and Kobye and the wounding of Moniroodeen, Porushoolla, Addoo and Emamoodeen.

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Committing Officer.—Mr. A. R. Alexander, Magistrate of Backergunge.

Case of KEAMOODEEN and others.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 31st March, 1857.

Prisoners convicted in position to view of Sessions Judge. Remarks on use of fire-arms in affrays in the district of Backergunge.

*Remarks by the Officiating Sessions Judge.*—A difference of opinion between the officiating law officer and myself renders this reference necessary.

The law officer would convict all the prisoners on the second count of the calendar; I, not being satisfied with the evidence, would acquit all the prisoners.

The principal prisoners in this case is No. 21, Keamoodeen Moonshee, the prisoner No. 22, Baburoolla is the uterine brother of the prisoner No. 21. The prisoners Nos. 23, 24, 25, 26 and 27, it is alleged were acting on behalf of the prisoner No. 21, Keamoodeen Moonshee, in the affray which led to this commitment. The prisoners No. 28, Ramchurn Sirkar, No. 29, Emamoodeen, and No. 30, Hossein, are alleged to be the partisans of Hurnath Baboo an influential landholder in this district.

In this affray, three men were severely wounded; two of them, or Kooshaye and Kobye, died from the effects of these wounds, and it is probable that the third or Moniroodeen prisoner No. 24, will limp for life. Kooshye died shortly after the affray under charge of the two chowkeedars, witnesses Nos. 39 and 40, but before his statement could be recorded. Kobye was admitted on the 14th January, and died on the 23rd of February, in hospital, previous to his death his statement was recorded on the 3rd January. The prisoner Emamoodeen No. 29, was very slightly wounded on the right leg and thigh. The medical officer

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observed two shot-wounds merely abrading the skin. The prisoner Addoo No. 25, was wounded in the right thigh; the Medical officer observed a superficial shot-mark, skin-deep only. The prisoner Porushoolla No. 27 was wounded superficially in nine places. On the right and left arms and on the chest. Koby was some days in "*hajut*" before he came into hospital. This man was wounded in the left thigh. The injury to the popliteal artery caused hemorrhage and eventually rendered amputation necessary, which was shortly followed by the death of the patient. One shot was extracted from the thigh of this man, but was not produced in Court; the Medical officer deposes that he did not extract any shot from the body of Kooshye.

There can be no doubt, in my opinion, that Kooshye and Koby were shot by the partisans of Hurnath Baboo; it must also be admitted that the prisoners Nos. 24, 25, 27 and 29, were wounded, but whether this case is one of mutual affray between the partisans of Keamoodeen Moonshee on the one side, and of Hurnath Baboo on the other, or a riotous attack by the partisans of Hurnath Baboo or Keamoodeen Moonshee and his party who, as stated by him in his defence, were on their way to the Sudder Station with their witnesses in a case which Keamoodeen had previously brought against the retainers and defendants of Hurnath Baboo and in which riotous attack Kooshye, Koby and Moniroodeen No. 24, were severely wounded and Addoo No. 25, Porushoollah, Emamoodeen No. 29, slightly so, admits of grave doubt.

It is abundantly manifest that previous enmity existed between Keamoodeen Moonshee and Hurnath Baboo and his mofussil agents and defendants. The records of several cases sent for from the Magistrate's Court have been inspected by me and they fully substantiate this fact.

The number of witnesses who have given direct testimony in this case is unusually numerous, for it is notorious that when an affray really occurs, all disinterested parties studiously keep out of the way, where several witnesses bear testimony to the same transaction, and concur in their statements of a series of particular circumstances, such testimony must either be true or the result of concert and conspiracy. In this country the maxim "*ponderantur testes non numerantur*" is always applicable and particularly so in the case submitted for the Court's consideration. The Court, in passing judgment upon this case, will doubtless take into consideration all those circumstances which are likely to influence and bias a witness in favor of either party and not forget that just and humane rule "*Tutius semper est errare in acquittando quam in puniendo*."

Eight witnesses have given direct evidence in this case their

\* Wit. No. 1, Koodrutoollah, names are given in the margin.\*  
" " 2, Koodrutoollah 2nd, In my opinion, the testimonies

|                             |                                     |             |
|-----------------------------|-------------------------------------|-------------|
| Wit. No. 3, Oozeer Mahomed, | of these witnesses are open to      | 1857.       |
| " " 4, Lall Gazeer,         | grave suspicion inasmuch as they    | July 14.    |
| " " 5, Suryutoollah,        | are not disinterested parties,—may  | Case of     |
| " " 6, Zuheer Mirdah,       | more, it clearly appears that it is | KEAMOODEEN  |
| " " 7, Abbas,               | strongly to their interest to give  | and others. |
| " " 8, Brindabun.           | evidence against Keamoodeen         |             |

Moonshee and to make out that this is a mutual affray.

The witness No. 1, Koodrutoollah, who lives close to the scene of the affray deposes to this being a mutual affray, and that men on both sides were wounded, he is unable to state who fired the guns. This witness names No. 21, Keamoodeen Moonshee; No. 22, Baburoollah; No. 23, Jhurroo on the one side; and No. 28, Ramchurn Sirkar; No. 29, Emamoodeen and No. 30, Hossein on the other as present in the affray. This witness was named amongst the defendants in a case brought by Hossein, a defendant of Hurnath Baboo, he is also named as a defendant in eight cases of plunder brought by the ryots of Koomaree Thakoorain, the sister-in-law of Hurnath Baboo against Keamoodeen and others, and which have been tried in this Court and sentence of acquittal passed in all in concurrence with the *futwa* of the Law Officer. This witness has clearly deserted Keamoodeen's cause and gone over to Hurnath Baboo's side and has in this case deposed to a mutual affray. I cannot credit such testimony.

The witness No. 2, Koodrutoolla, son of Chittoo, deposes to a mutual affray, states that the prisoner No. 26, Abdool Khan, Noimoodee the son of Keamoodeen Moonshee were armed with guns on the side of Keamoodeen, and the prisoner No. 29, Emamoodeen and a party name unknown on the side of Hurnath Baboo. The witness cannot state who fired the guns. Before the Magistrate, this witness could not depose as to who were armed with guns. This witness names Nos. 21, 22, 24, 25, 27, 28, 29 and 30, and points them out in Court with the exception of No. 25. The eye-sight of this witness which is very weak was tested by me, the Court will find the result in the record. The prisoner No. 26 was placed very close to the witness before he could recognize him. This witness deposes that he was standing one hundred and fifty feet from the scene of strife. This witness is the ryot of Hurnath Baboo's sister-in-law Koomaree Thakoorain, I cannot consider this testimony as disinterested, and therefore it is in my opinion unworthy of credit. Further, this witness is named amongst the defendants in a case in which Keamoodeen is prosecutor, and which dates prior to the case under reference. It is therefore manifestly to his interest to make out the case as one of mutual affray and to implicate Keamoodeen and his party as much as possible.

The witness No. 3, Oozeer Mohammed, also deposes that the affray was a mutual one and that he saw guns in the hands of



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the prisoner No. 26, and Noimooder, son of Keamooder Moon-shee on one side, and in the hands of the prisoner Emamooder No. 29 and of an unknown man on the other side. This witness did not even mention the name of the prisoner No. 26 in his deposition before the Magistrate, though in this Court he not only names him but says he was armed with a gun; states that he saw Emamooder prisoner No. 29 in the house of Hossein and that the prisoner was wounded by shot. Cannot state who fired the guns. This witness is the ryot of a Howladar, by name Joynarain, who again pays rent to Koomaree Thakoorain the sister-in-law of Hurnath Baboo. The prisoner No. 26, Abdool Khan, was formerly a Hindoo and is the cousin by the mother's side of Rammanick Sirkar, the naib of Hurnath Baboo, having embraced the Mahomedan religion, he is of course obnoxious to his Hindoo relations. He has, in my opinion, been implicated in this case at the instance of the aforesaid Rammanick and to get rid of him for a time.

The witness No. 4, Lall Gazee, also deposes that the affray was a mutual one and that men were wounded on both sides, deposes that the prisoner No. 26, Abdool Khan and Noimooder had guns in their hands on the side of Keamooder Moon-shee and Emamooder No. 29, and an unknown party on the side of Hurnath Baboo, but is unable to state who fired the guns or who were wounded. This witness is the ryot of Lukeenarain Howladar, who again pays rent to Bishnath Baboo, the cousin of Hurnath Baboo, he is therefore not a disinterested party. It is strange that this witness remembers who had guns in their hands, but not who fired them, he also states that he knew the prisoner No. 26 from only two months before the affray. Before the Magistrate this witness did not name the prisoner No. 26, Abdool Khan, until the prisoner was produced in his Court and when he recognised him. Again, before the Magistrate this witness deposed that Noimooder the son of Keamooder being enraged at the abuse given to his party by the Baboo's party, fired his gun and wounded three unknown north-country-men partisans of the Baboo. He also states that the prisoner Emamooder No. 29 returned the fire and wounded Kooshye on the side of the prisoner Keamooder Moon-shee. The above are material variances and, coupled with the fact that the witness is not a disinterested party, render his testimony utterly untrustworthy.

The remaining four eye-witnesses Nos. 5, 6, 7 and 8 are not the ryots of the Baboo Hurnath or of his relations, but their evidence cannot, in my opinion, be credited; these four witnesses depose that they went to Debrah, a village at some distance from their homes, to look after some land held by them in that village, and that as they were returning home in the same boat towards the end of the month of Agran last with the paddy,

the produce of the land held by them in the village of Debrah, when passing through the Taraboowah, that they suddenly came upon the scene of affray. Now, instead of making off immediately, they put to their boat and sat down and watched the affray, such conduct is utterly unlike what natives would do under such circumstances. Their accounts of the affray as far as making it out to be a mutual affray tally, but in the particulars their testimonies are at variance one with another, and facts deposed to by them in the Magistrate's Court are not deposed to in this Court.

I proceed to give a few instances amongst many material variances in the depositions of the aforesaid four witnesses. Witness No. 5, Shuriutoollah before the Magistrate deposed that two men were wounded on either side, in this Court he deposes that Kooshye was shot by the prisoner Emamoodeen No. 29, and Emamoodeen by Noimoodee. Further deposes that the boat they were travelling in belonged to the witness Zuheer Mirdah No. 6, and that no hire was paid, whereas Zuheer Mirdah deposes that the boat belonged to Gopee Mistree and that the hire was four annas per diem.

The witness No. 5, Shuriutoollah says, he reached his home ten *ghurrees* of the day remaining and that they first touched at the *ghat* of Zuheer's house, Zuheer states that he reached home at night. The witness Zuheer Mirdah says that he heard two reports of guns; that he cannot state who fired them or who were wounded; that he afterwards heard that Kooshye had been wounded, this witness who, it is alleged, holds a *howla* in Debrah states that the witness Shuriutoollah holds eight *beegahs* under him, while Shuriutoollah states he holds but three.

The witness Abbass No. 7, before the Magistrate, deposed that he saw guns in the hands of Abdool Khan prisoner No. 26, of Hossein No. 30, and Emamoodeen No. 29. Then retracts this statement and says he saw a gun in the hands of Abdool Khan above. In this Court he deposes to hearing four reports, but does not state that he saw a gun in the hands of Abdool Khan. This witness too says he reached home towards the evening and not at night as stated by the witness Zuheer Mirdah.

Brindabun witness No. 8, says he saw guns in the hands of Noimoodee, Baburoollah, Hossein and Emamoodeen, says that while at Debrah he lived in an abandoned house, can't say whose, nor can he say to whom the boat belonged in which he made the passage homewards. I would also observe that towards the end of Agran was unusually early in the season for the witnesses to be taking home the produce of their paddy-fields in the grain, and they do not say they were taking it in the sheaf. I am, therefore, for the above reasons, suspicious of

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this evidence and deem it probable that the assertion of Keamoodeen Moonshee in his defence, that these witnesses though not the ryots of Hurnath Baboo are his servants may be not altogether without truth.

The evidence of the two chowkeedars witnesses Nos. 39 and 40, and who are chowkeedars of the village of the Taraboowah, is that they heard of the affray from Rooheollah the brother of the prisoner Keamoodeen Moonshee, that they proceeded to the house of Keamoodeen and found Kooshye lying there wounded; the witness Boydonath Dabe states that Kooshye was unable to give any account of how he had been wounded; that he took Kooshye in company with the prisoners Keamoodeen, Baburoollah and Jhurroo to the darogah who was at the time of the affray at a place called Soktaghur and that Kooshye died *en route*. In the Magistrate's Court this witness deposed that he was at home on the day of the affray, but did not witness the affray and that he heard no reports of fire-arms. In my Court this witness states that he was not at home at the time of the affray, but at the Solorah *hat* four *ghurrees* distant from the scene of the affray. He is unable to give a satisfactory explanation of this material variance.

The witness Mohun chowkeedar deposes before the Magistrate that Kooshye, the wounded man, informed him that he had been shot by the people of Hurnath Baboo. In this Court he says he asked no question and received no answer from Kooshye.

Keamoodeen in his defence states that Kooshye was alive when he reached the darogah, but that the darogah finding that the statement of the dying man was unfavorable to Hurnath Baboo's people did not record it. It is impossible to say whether this averment be true or not. One thing is certain that Keamoodeen his brother Baburoollah and Jhurroo, all prisoners in this case, accompanied the chowkeedars and lodged their statements, that the wounded man had been shot by the partisans of Hurnath Baboo in a riotous attack upon Keamoodeen and his party, who were, it is alleged, proceeding to the Sudder station with certain witnesses in a certain case in which Keamoodeen was the prosecutor and the dependants of the Baboo were defendants.

To sum up, I would observe first, that the direct evidence in this case is not to be depended upon, because it is either not disinterested or where it is so, it is glaringly discrepant. Second, that previous enmity between the parties is very manifest; and third, that the prisoners are entitled to the full benefit of any doubts that such a state of things may give rise to.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We have very carefully perus-

ed the proceedings in this case, and are obliged to differ from the opinion formed by the Sessions Judge as to the credibility of the evidence. We find that evidence is supported by the facts of the case, as given by the prisoners Nos. 21, 22, 23, 24, 25 and 29, before the police darogah and Magistrate. The Sessions Judge makes no reference to these points.

The Court are of opinion that the witnesses in this case, as in many others which are committed for trial in zillah Backergunge, have been tampered with to give their evidence on the Sessions trial in such a way that, avoiding gross perjury, they may so alter their statements made before other authorities as to throw doubt on the whole evidence. In more than one instance, a witness (see depositions of Nos. 2 and 4,) appears to have committed perjury, and the Sessions Judge, instead of passing by the contradictory statements without notice, should have committed the party for trial for perjury. He should now consider whether he should not proceed to do so. Another cause affecting the evidence may be found in the delay which took place between the occurrence and the commitment. The affray took place on 11th December, and the case was committed for trial in the end of March, though several of the prisoners were apprehended, and the evidence for the prosecution taken in December. It is not improbable that after so long an interval, the witnesses should have forgotten many things they saw, or described them in a different manner to what they did at first. While admitting with the Sessions Judge that the credibility of some of the witnesses is open to grave suspicion on account of their having been mixed up more or less in cases between the present parties, yet this objection does not apply to the witnesses Nos. 5, 6, 7 and 8, and the Sessions Judge's suggestion as regards them, i. e. that they are probably servants of Hurnath Baboo, is unsupported by any proof. Nor do the Court observe, (as stated by the Sessions Judge,) in the evidence of Koodrutoollah No. 1, any appearance of his having deserted the party of Keamooddeen for that of Hurnath Baboo; for if his evidence bears strongly against Keamooddeen and his party, it tells equally against the other party. The evidence of the witnesses is, as above remarked, borne out by the facts stated by the prisoners before the police darogah. Those statements were attested by the subscribing witnesses as having been made voluntarily. The Court consider the fact of a mutual affray having taken place to be fully proved, and that the prisoners under trial were engaged in it. This is the third\* case before this Court within four months from Zillah Backergunge, of affray and riot

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\* Torab Ali, April 27th, p. 561.

Kuleem Akhoond, June 19th, p. 772.

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in which guns have been made use of and parties been killed or wounded by gun-shots. We think therefore that it is necessary to make severe example of the parties engaged. We therefore sentence the prisoners Nos. 21, 22, 28, 29 and 30, to fourteen years' imprisonment with labor and irons in banishment, and prisoners Nos. 23, 24, 25, 26 and 27, to seven years' imprisonment with labor and irons, in banishment.

With reference to the frequent use of fire-arms in disputes about land, and in other riots which take place in the Backergunge district, we direct a copy of these remarks be forwarded for the information of the Hon'ble the Lieutenant-Governor of Bengal, with a view, that if it seems right to his Honor on a consideration of the frequency and fatal termination of these disputes, and the dangerous tendency of the habitual use of guns and other deadly weapons, the population be disarmed, or restricted as to the use of such weapons.

From the record, it appears that the dispute which led to this affray is of long standing; but we do not find that any preventive measures were taken by the Magistrate to avert a breach of the peace. The Sessions Judge will call upon that officer to explain why (if they have not been) the parties were not bound down in heavy recognizances to keep the peace. If they have been so bound down the Magistrate should at once proceed to take the proper measures with a view to realize the amount of the recognizance.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Dacca.

1857.

## GOVERNMENT

*versus*

SHEIKH JADOO.

July 15.

Case of  
SHEIKH  
JADOO.

Prisoner convicted of being by profession a thug. Remarks on previous acquittals, and on recommendation as to conviction and sentence.

CRIME CHARGED.—1st count, charged with having murdered by thuggee Bydeenath Majoomdar, Gour Doss his son, Gungagobind Majoomdar, Sonaram Khitmutgar, Mungla, Sheeroo, and Jullooa boatman at Nawargacha thannah Shejadpore, zillah Pubna in May or June, 1829 or 1830, corresponding with Justee or Asar 1235 or 1236; 2nd count, having plundered the property of the murdered men and having received their share of the same; 3rd count with being by profession thugs and having belonged to a gang of thugs under Kashee Sirdar and Gopee Biswas (thug jemadars) under provisions of Act XXX. of 1836.

Committing Officer.—Captain C. H. Keighly, assistant general superintendent and Joint-Magistrate.

Tried before Mr. J. E. S. Lillie, Sessions Judge of Dacca, on the 16th of April, 1857.

*Remarks by the Officiating Sessions Judge.*—Four approvers have related the particulars of various acts of thuggee in which they were engaged with the prisoner, No. 3, was arrested in 1837 in one of those cases and that he was acquitted. The approvers who have given evidence in the present case and others who are dead, accused the prisoners in their original statements in 1841.

Prisoner No. 3, states in his defence that he has been accused because his brother who was an approver, accused other approvers. Three witnesses deposed regarding his present mode of living.

I concur in the *futwas* of the law officer which acquits the prisoners on the first two counts, but I would recommend that prisoner No. 3, be convicted of having belonged to gangs of thugs and that he be transported for life. I have already recommended, in the case referred with my letter of this day's date, No. 221, that prisoner No. 4, be similarly punished.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner, as appears from the abstract of the committing officer, was heretofore tried on the specific charge entered in counts 1 and 2, and acquitted. He should not, therefore, have been again tried on the same charge; the more especially as there is proof from the evidence of the approvers, of the prisoner having been engaged in *several* acts of thuggee; thus his commitment on the charge referred to, was both unnecessary and illegal. The prisoner has been acquitted by the Sessions Judge on the specific charges, but recommended for conviction on the general charge entered in count 3, i. e. of being by profession a thug and of belonging to a gang of thugs. The evidence of the approvers, the credibility of which this Court find no reason to question, clearly proves *this* charge against the prisoner. We therefore convict him of the said charge, and sentence him, under Act XXX. of 1836, to imprisonment for life with hard labor and irons. The Sessions Judge *instead of recommending a conviction* should have convicted the prisoner, and *recommended the measure of punishment.*

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Case of  
SHEIKH  
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## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

MANZING (No. 4.) AND BOKA ALIAS THESING (No. 5.)

Assam.

1857.

July 18.

Case of  
MANZING  
and another.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutrix on the night of the 26th of November, 1856, attended with the wounding of said prosecutrix and murder of her son Deeboo and daughter Manggee and plunder of property at said time and place to the value of Rs. 6-11; 2nd count, with being accomplices in said dacoity.

Committing Officer.—Capt. W. Agnew, Magistrate of Gowal-

para.

Tried before Major J. Butler, Deputy Commissioner of Assam,

Prisoners convicted. Capital sentence passed, with reference to the atrocity of the murders in which prisoners were proved to be accomplices.

on the 19th May, 1857.

*Remarks by the Deputy Commissioner.*—"I do not remember

the month and date, but it is probably

Prosecutrix's statement. a month and a half ago that one night

as I, my daughter and son were sent-

ed inside my house round a fire, that some body from the out-

side through a hole on the west side thrust a spear which struck

me on the upper part of the left arm. On calling out, 'Who

wounded me?' and laying hold of the spear the persons who in-

flicted the wound pulled the weapon with so much force that

I could not retain my hold of it, but during the struggle for

the weapon I received two wounds with the point upon my left

breast, after which, and on my standing up, another wound was

inflicted on my breast, believing that I should die, I ran out of

the door followed by my daughter Packsee and got into the

jungles. My daughter Manggee and my son Deeboo being too

young were unable to follow us and were murdered by the party.

They after that took Manggee's head and one *kansha thal*, one

*jagah* cloth, one *ekputta*, two *daws*, one axe, one fowl and cash

Rupces 5-4, (which money had been tied up in a rag and depo-

sited, under the *dhan* in a paddy-drum) and departed, but I

could not recognize any of them, at the moment of my running

away, however, I saw about four or six men, whom I recognized

to be of the Garrow tribe. After I had fled, and when they

were striking them with the spear and *bungburry*, I recognized

the voice of my daughter Manggee and that of my son Deeboo

calling out, Mother, mother! That night I was obliged to stay

away in the jungle. On the morning on the next day I return-

ed home with Rungbengah, Kebol and Purbah Cooch. On our

way to Pubna found the headless body of my daughter Manggee and in the Pubna itself in a little jungle, discovered the corpse of my son Deeboo having a wound inflicted with a spear on the back which penetrated through the belly, Manggee's body was ripped open from the throat to the naval, the intestines lying out, and a wound on each hand and foot inflicted with a *bunghurry* or sword. On entering the house and making a search the articles enumerated were found missing. From the circumstance of the "*dhan*" lying on the floor, (at the bottom of which was the money) and from the signs of a search having been made by means of a fire, I am certain that they committed the dacoity and took away the property. I have no one residing close to my house, and a conversation carried on in one house would not be heard in another, other houses also are similarly situated in regard to each other. Had no quarrels with the Garrow tribes. The total value of property plundered amounts to Rupees 6-11, and my witnesses are Rungbengah, Kabol and Purba Cooch.

1857.

July 18.

Case of  
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"We went accompanied by Mincing Garrow with the intention of killing (literally cutting up) the *Cooches*, but I did not participate myself in the act of cutting or wounding. I cannot tell on what date, but one evening as we were seated drinking in Manzing Garrow's house in Dingaparah, Mincing, Jilling, Manzing, Rebbah Khassee, Rengkhan, Boka, Micknung, Ghekmun, Themun, and Oolung, consulted between themselves and proposed killing the *Cooches*: the day after this Oolung, Themun, Inchung and Boka Garrows were sent to bring Meling Garrow and detain him, and the day after this, I, Mincing, Jilling, Khassee, Rubbah, Manzing, Rengkhan Ghekmun, Mikrung, and an independent Garrow (whose name I do not know) in all ten of us met together. In my hand, I had the *bunghurry* sword, in Court; Mincing had a *bunghurry* sword and shield. Jilling had also a *bunghurry* sword and shield; Mikring only a *bunghurry* sword, the independent Garrow had a shield and *bunghurry* sword. The rest, viz. Khassee Garrow, Kengkhan and others had *chengdharrah* spear each; thus armed we set out, when near the Boorah Booree village in the jungle we met Boka Garrow, Oolung, Inchung, and Themun Garrows returning after having kept Meling at home, Oolung and Themun went home, but Boka and Inchung joined us.

While it was day we continued our route, and when we had proceeded as far as Porah Khasewa's house we retraced our steps until at about half a "*prohur*" of the night, when we came towards the back of a *Cooche's* house (name unknown) inside which seeing the *Cooches* seated at a fire, Rengkhan Garrow piercing the *tattee* or wall wounded a *Coochonee* and Khassee Garrow with a *chingdar* spear wounded a boy, on which a girl coming



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out and giving the alarm she was struck with a *chengdhara* spear by Manzing Garrow, and on her retreat Rebbah Garrow gave a thrust, on which she fell to the ground, Manzing Garrow then cut off her head with a *bunghurry* or sword, and took it with him. The *Cooch* boy was searched for, but not being found he was not beheaded, after this Mincing with Jilling Rebbah, Khassee and Manzing Garrow entered the house where, after making a fire with some straw taken from the thatch, found tied up in a bit of rag in a *lookie* or basket 5 Co.'s Rs. he also got one axe, two *daws*, one piece of cloth, one old *jajar*, one *thally* and one fowl, all which we removed out, and then went into a jungle to the north of the house at night seating ourselves in the jungle we killed the fowl and ate rice. At the first crowing of the cock we emerged from the jungle and went away. On the evening of the same day I came home. Mincing having taken me along with them; this is the way in which we committed the crime. They gave me nothing of the booty. Mincing Garrow got 3 Rs. and two *daws*: Jilling Garrow Rs. 2 and one *thally*, Khassee Garrow one axe and one *Jajarkapore* and Manzing Garrow got one piece of cloth. On the way when near Thassaparah the division was made; Mincing took the head tied in a cloth, the same Mincing went to Dengraparah, and the next day taking Jilling and Boka Garrows with him departed for Rungmen Gere in the independent country to the house of Mincing's father by name Khersun. Boka came home afterwards. Manzing Garrow coming to Monoparah, and hearing that the darogah was going to apprehend us, sent us intelligence on which we all fled: the mohurir and burkundaz came upon us in a forest and apprehended us. Mangun Garrow has fled to Gaunguree and Rengkhan Khassee and Rebbah to Chepukguree. Whether they are there or not I cannot say. Mincing and Jilling are gone to the independent country. When first the commission of the crime was discussed, Mincing made no mention of there having been any quarrel with the *Cooch*, he would cut off the head and bring it away; when asked whether he had any thing to add in defence or any witnesses to name said in answer "I actually committed the crime, have no defence to make or witnesses to produce. I have stated exactly what I did."

"I did go with Mincing and others to commit this offence,

Boka *alias* Thesing prisoner's  
statement at the thannah.

cannot tell the date on which I,  
Inching, Themun, and Oolung  
went to bring Meling Garrow

and detained him, after keeping him at home, we went our way and when near Boorah Booree, we met Mincing, Jilling and others; Inching, Themun, and Oolung Garrows returned home, while I, Mincing, Jilling, Pherchung, Ghekmun, Mazing, Rebbah, Khassee, my father, Mangong, Rebbah, Ringkhang and

Marrakoo Garrows, with shields *bunghurrees* swords and *chingdars*, spears, went down to the plains as far as Para Kaswa, we then retraced our steps to the mountains, and proceeding under cover of the jungles, we got close up to the Coochee's house at about half a *prohur* of the night, inside which we could see them from our position outside, sitting beside a fire, Pherchung Garrow then piercing the *tattee* or wall, stabbed a *Coochonee*; a *Cooch* also was stabbed, but by what Garrow I cannot say; who, after receiving the stab, came out, when Mincing, Jilling Rebbah and Manging ran after her and stabbed her, Mincing Garrow striking off the head with a *bunghurry* sword took it with him. After which Mincing, Jilling Pherchung, Rebbah, and Khassee entered the house and taking some straw from the thatch made a fire and took from inside a *khacha* or basket 5 rupees, which was tied up in a piece of rag, one *thally* or plate, axe, two *daws*, one *gillap* cloth, one *jajar*, and one fowl, after which selecting the road through the jungle proceeded as far as Oojaspathar, where in the jungle we killed the fowl and ate rice, and while yet a little of the night remained, left the place. In a jungle near Thesaparah, the plunder was divided, Mincing taking 3 rupees and *thally* or plate, Jilling 1 rupee, Pherchung 1 rupee, Rungkhan one *daw* and the *jajar*, Khassee took one axe, and Rebbah Garrow one *gillap*, (cloth); towards evening of the same day went home. Mincing has gone to Rangmun Geeree and taken the head with him. In this manner did we all together commit the offence. I myself did not cut or wound any person, Rebbah, Pherchung Mangun, Ghekmun and Rungkhan Garrows were armed with *chingdars*, spears. I, Mincing Jilling, Mackrung Khassee and Manzing with *bunghurrees*, swords, Mincing Jilling and Pherchung also carried shields." On being asked why he had at first denied the charge? Said "I did join company with the intention of committing it, but through fear did not acknowledge it at first; now, however, what I have said is true. It was at first in Inching's house, and the next day in mine that, while drinking, we meditated the attack on the *Cooches*. Whatever I have done I have truly written, and I have no defence to make or witnesses to produce." He said afterwards, "Inching is my mother's brother."

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Made through the medium of an interpreter.

Defence of Manzing prisoner before the Magistrate. "No, I did not kill or wound any one, nor did I plunder and take away any property. Mincing Garrow having called and taken me with him, I accompanied him, Ghekan and I stood on the road; Sengum, Mincing, Pherchung, Wajun, Jilling, these five armed with *bunghurrees* (swords) and *chingdars* (spears) went (I do not remember on what may be in Assin) towards evening to the *Cooche's* house and they

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committed the offence, but whom they murdered or how it was done, owing to our standing at about the distance of a bowshot and in an obscure situation we could not see with our own eyes. At about a *prohur* of the night, Mincing and the other five came to where we were, with the head of a girl, and it was then, from a statement made by Mincing to the effect that Jilling Garrow had killed a girl whose head they brought, that I became aware of what had taken place. The said Mincing moreover said that he had with his own hands with a *bunghurry* sword killed some one whose name he did not mention, that Wazing Garrow had stabbed a person with a *chungdhar* spear, that that person did not die, but ran away, could not say what property had been plundered and brought away, but Mincing mentioned that they had brought 20 Rupees in cash. Towards evening of the day prior to the commission of the offence, Mincing and the others invited me to go and drink liquor in Mincing's house, I declined going, but on the morning of the next day Mincing inviting me again to go with them without explaining where I went, but was merely as in company, and then they did not take me to the place of attack. This confession is made of my own accord. I have nothing to offer in defence. The occurrences as they took place I have stated above, to the truth of which all who accompanied me could vouch were they questioned on the subject. I cannot tell the reason of their having murdered and wounded the Cooches. The head alluded to by me was conveyed to Khirsun Lorkun's house in Rungmangeeree within the independent country by Mincing.

"I did not commit the offence, Mincing Garrow telling me

Defence of Boka *alias* Thesing  
prisoner before Magistrate.

he was going in search of his  
slave who had run away, took  
me with him to carry provisions ;

he, however, left me, Manzing and Ghikmun about half way in Mirithparah ; Mincing with Jilling, Pherchung, Wazing and Sangum arrived at about 4 o'clock in Coochparah. Jilling was armed with a *bunghurry* and shield, Mincing also with a *bunghurry* sword and shield, Pherchung had a *khappur* (a kind of spear) Wazing had a *bunghurry* sword and shield, and in Sangum's hand was a *khappur*. It was here that Mincing Garrow killed a woman ; Jilling killed her son and Pherchung wounded or stabbed a woman ; Mincing took one of the heads which he said was that of a male person, he took also two pieces of cloth, Pherchung took a *dhao* ; Wazing an axe ; Mincing also took five Rupees ; Wazing at first pierced the house ; afterwards, when, through fear, they ran out of the house, were murdered outside, for what cause they were murdered, I do not know. I did not see them murdered, but heard of it from the parties who committed it, after whose return, and when we had finished our meals each went that night separately to his own house.

The day after the one on which Mincing and the others (the abovementioned five persons who committed the murder) drunk liquor at my father Manzing's house, I was in the Patulgeeree of Thessubpara, the night following and after the commission of the offence, they came to me (on the very night) and mentioned its occurrence saying that the head had been given to Khunshye Lakwa of Kungmangeeree on the independent country, the reason for doing so, being his relationship to Mincing. I neither committed the murder nor wounded any one, nor did I take any property. I only know of their occurrence. This is my answer (*jowab*) I have no witnesses to produce, and the statements I have made have been made of my own accord."

"No, I neither killed nor wounded any one, nor did I plunder any person's property, neither did Mincing or any others take me with them to commit the offence, nor did I go myself."

"No, I neither wounded or killed any one, neither did I take away any person's property. Nor, with the intention of committing this offence, did I associate myself with any one, neither was I asked by any to do so."

"I do not remember the month and date, but it is probably about two months ago that one night as I, my mother (by name Kheneye) my sister Mangjee and my brother Deeho. were seated together round a fire, in our northern faced house, at about a *prohur* of the night some body from outside thrust a spear at my mother (Kheneye) which struck her in the upper part of the left arm, on which calling out, "Who made the thrust?" caught the spear, which she could hardly keep hold of, and while both parties were pulling for it, she received two wounds upon her left breast, and afterwards on standing up, one on the breast, on which my mother and I after her fled to the jungle, so our lives were saved. After this they murdered my sister and brother. On going away they took with them my sister's head and plundered cash Rupees 5-4 (which had been tied up in a rag and kept under the *dhan* in a basket) one axe, two *dhaos*, one *annye* cloth, one *dhootee*, one fowl and one *khassa thal*. I knew from their language that they were of some Garrow tribe, and I ascertained when running away that they were in number about four or thereabouts, I saw them wound my mother with my own eyes. The other circumstances which my mother discovered are no doubt recorded in the statements made by her; for, not having myself gone home through fright, I neither saw the state of the corpse of my

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sister and brother, nor the place where they were found. During almost the entire night of the occurrence, I remained concealed in the jungle and when only a little of the night remained I went to Hajingpara and remained in Kooriah Mundul's house. After we ran away my sister and brother were not able to follow us, and when they (the Garrows) wounded them I heard them call out, "Mother! mother!" some time prior to this occurrence when I and Jabsee were employed in cutting paddy in the field of one Rungah we saw eight or nine Garrows whom we did not know (those apprehended in this case resemble them.) They passed close to the field where were employed and went towards Gendahparah, I saw them again towards evening returning from that side and go towards Kissubparah. Now, I recognise these to be of that party. Had no quarrels either with Garrows or anybody else. The habitations of others are at a distance from ours."

"I do not remember the month or date, nor can I say how many days have elapsed since the occurrence, but on the day of the night that the prosecutrix was

Jabsee, 2nd witness for prosecution.

wounded and her son and daughter murdered, as I and Phaksee were employed in reaping paddy in the field of Rungah and at about noon we saw about nine Garrows, with their arms about them, going towards Golaparah, they returned again towards evening and went towards Kissubparah, this was on the same day that the dacoity took place. The place of its occurrence being at some distance from my place of residence I could not see what occurred, it was only from hearing the cries of some person and from the glare of the light I suspected that the Garrows had gone there, and through fear I fled myself. This is all that I know, I know nothing more. On looking at the defendants now I recognise them to belong to the party of Garrows, I have alluded to, as having seen passing near the paddy-field where I was, and these resemble them also in features. I am not aware of any quarrels having occurred between the prisoners and the prosecutrix or her relatives. The distance of the field where I was occupied from where the Garrows were passing may be about that of the Magistrate's Court from the zemindary cutcherry, or about one and half bowshot, and the reason of my having been able to see them was, that there was no jungle in the *pathar* (rice-field.)

"I do not remember the month or date of the night the dacoity occurred, but the day after its occurrence I met the prosecutrix wounded in the house of Kullum and hearing from her that certain strange Garrows had, the preceding night, wounded her, murdered her daughter Manggee and her son Deeboo, that

Witness to the *sooruthal* Ram-  
bengah 3rd witness for prosecution.

they had committed a dacoity and taken away her property, I proceeded to the place where it was said to have occurred and saw Manggee's body lying without the head, which had been carried away; the arms were marked with wounds that had been inflicted with a *bunghurry* or sword or *dao* and the belly ripped open, Deeboo's body I saw with a wound inflicted with a *chungdarah* or spear on the back, which went through the stomach and a second wound inflicted with the same instrument on the thigh which went through and through. Manggee's body was found lying out in the vicinity of the house and Deeboo's in a little jungle thereabouts also. Within the house where these acts had been perpetrated, I saw the paddy scattered about the floor and some ashes, the remains of the fire that had been made. I also learnt from the prosecutrix that Rupees 5-4, in cash which had been deposited in the paddy, had been taken away from the paddy when poured out, and also two *daws*, one *khansa thal*, two pieces of cloth and one fowl. The darogah came some time afterwards and examined the dead bodies, I was present at the time and the bodies were in the same condition then, as I had previously seen them. Upon the left arm of the prosecutrix projecting to the breast was one wound, two upon the breast itself and one on the chest of the body, cannot speak as to the length and breadth of the wounds. Any tumult in the house would not be heard in those situated to the east of it. Know of no quarrel having occurred on the day of this occurrence either between the prosecutrix or her relatives and the Garrows passing through our village, but I heard from my sister Jacksee that one day when reaping paddy, she had heard that ten Garrows or thereabouts had passed by near to where she was employed."

"I do not remember the month or date, but I believe about

Kebul Bhooiah, Cooch, fourth  
witness for prosecution.

a month or a month and a half ago this dacoity occurred, I did not, however, see it, nor was I aware of it until the following day, when I heard from Rambengah and another person by name Koydee that on the night preceding some Garrows had wounded Kheneye, the prosecutrix, and killed her son Deeboo and daughter Manggee and had also plundered her property. On going to the place I saw the headless body of Manggee with the intestines out, in consequence of the stomach having been ripped open with a *bunghurry* or *daw* sword, lying in a field in the vicinity of the homestead, and in the same locality in a little jungle the body of Deeboo with a wound which had been inflicted on the back, but had come out of the stomach, and another on the right thigh. On the left arm of the prosecutrix was a wound inflicted with a *chungdharah* or spear and three lesser ones below it, extending from the breast to the ribs. Not having scrutinized the wounds I can-

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not speak as to their length and breadth. I also on entering the house saw the paddy scattered on the floor, and the ashes, being remnant of the fire that had been made; when there I learnt from the mouth of the prosecutrix that Rs. 5-4 which was kept in a bit of rag had been plundered and taken away with two *dawos*, one axe, one *Jhansha thallah*, one fowl, and two pieces of cloth. When the darogah came afterwards to make a *sooruthal*, I observed the bodies to be in the same state as I had previously seen them. A few days previous to the occurrence of the dacoity, I cannot say exactly on what date, four Garrows came to my house on the plea of asking for medicine, I was not at home at the time, having gone to Hajingporah to procure certain necessities required for Rambengah's wedding, my son Joonakoo, who was at home, on seeing the Garrows approach with their arms, &c. was frightened and came to me towards evening; on hearing it from him I came home, but did not meet the Garrows on my return, heard that they had gone to Jilling Garrow's house. On the next day I went to Jilling's house and encountered Mickrung, Boka, and Eechang Garrows, who said, they had been to my house for the purpose of drinking liquor; a few days after this and some days subsequent to the first mentioned circumstance, the crime was committed. This is what I know, I know nothing more; some days later, the above named Mickrung, Boka and Eechang with Ghikun and Manzing prisoner having been apprehended by the police mohurrir, (on, I am not aware what information) and brought to the darogah, acknowledged of their own accord, in the Garrow language, that although they went accompanied by Mincing to commit the crime, they themselves had no hand in its perpetration, that Mincing and the others had done it. I understand a little of the Garrow language and having been present, overheard the above when stated. To a question put to the witness whether he had had any disagreements with the Garrows previous to the occurrence of the crime he said, No, I have no disagreements with them, nor has any one to receive anything from me, neither was there any ill-feeling existing between Khenye and them.

Nos. 5, 6 and 7,\* are witnesses to the apprehension of the prisoners and to their confessions at the thannah.

\* Wit. No. 5, Ringram.

" " 6, Kuntiram.

" " 7, Mascy.

Witnesses at the thannah.

† Wit. No. 8, Ram Singh.

" " 9, Seclal.

" " 10, Mathra.

Witnesses to the confession before the Magistrate.

Jheeling *alias* Meeling,

No. 11, witness for prosecution.

Nos. 8, 9, and 10,† are witnesses to the confession made by both the prisoners before the Magistrate.

"About a month before I heard of the commission of this offence at a place in Tharamer Pabbur, Mincing Garrow cut down a plantain tree, on which

Kibbur Kooch of Kissubparah called him a thief, for which imputations Mincing said one day before me, Boka, Mekring and Jilling that he would kill Kibbul Cooch, on which I told him that the times were bad and the authorities severe, Don't speak of such a thing, Mincing said in reply, "Whom do I fear?" some days subsequent to this and with a view to watch (Bengali *khaup*) an opportunity of effecting the above purpose the said Mincing sent me, Inching, Boka, Themon, and Ooling to Kibbul Cooche's house, not finding Kibbul at home, they came and remained in my house; the next day, the said Kibbul came to my house, and remonstrated against our going to his place armed with shields and knives, as it frightened his family. Many days after that, I heard of the perpetration of the crime now committed, but who were the perpetrators I did not hear, and it was only at the thannah that I learnt from Boka and Meekring that Mincing had committed the murder; I know nothing more."

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"I know nothing of the charges laid. But a few days prior to the occurrence of these crimes Kisto Cooch, No. 12, witness for prosecution, (do not remember how many about a *prohur* before the close of day, I saw from my own Pabbur about eight Garrows armed coming to my father-in-law Kibbul Cooche's house; after they departed I went there and learnt that they had come for the purpose of having something to eat. My father-in-law was not at home at the time, having gone to Rambengah's house, my brother-in-law therefore went and informed him of it. This is all I know and nothing more."

"I know nothing at all of this case. But one day about two months ago I saw them (pointing to the prisoners Boka and Manzing) and three others eating rice in Milling Garrow's house, three days later I heard of the murder, I know nothing more."

Pallock No. 13, witness for prosecution. •

"I did not go in company with any one to commit this offence, the darogah told me, that if I acknowledged having gone to commit the offence, I should be released, I therefore said as I was tutored by him, the witnesses of this are Anum Garrow of Dengraparah, Thumrung and Bocksan Lakma, if they be sent for and asked it will appear."

Defence of Manzing prisoner before Punchayet.

The same in every respect as that of Manzing prisoner.

Defence of Boka *alias* Thesing prisoner before Punchayet.

This is a most atrocious case of dacoity with murder. It appears from the evidence of Meeling No. 11 witness, that Kibbul No. 4 witness abused and called Meelsing Garrow (who has not yet been captured) a thief for cutting down a plantain tree, and for this trifling



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provocation he resolved on being revenged on the whole class or tribe of Cooches. Accordingly a party of eight or nine Garrows watched their opportunity, and on the night of the 26th November, 1856, armed with *bunghurees* or Garrow swords and spears and shields, attacked the prosecutrix in her house at about 9 o'clock at night by spearing her through the *tattee* wall of her house, whilst she was warming herself with her son and two daughters over a fire. The prosecutrix and one daughter fled to the jungles and saved their lives; her son Deeboo and the other daughter Manggee likewise endeavoured to effect their escape, but being young were both speared or cut down with the Garrow *bunghurry* or sword and killed on the spot. The head of the girl was cut off and carried away, and the house of prosecutrix was plundered of property valued at 6 rupees 11 annas.

Five persons as per margin\* were apprehended by the darogah,

- |                                 |                               |                                                                  |
|---------------------------------|-------------------------------|------------------------------------------------------------------|
| * No. 1, Ghikmon                | } died in jail<br>of cholera. | three died of cholera in jail before they were brought to trial. |
| " 2, Incling                    |                               | Before the darogah the prisoners                                 |
| " 3, Mickrung                   |                               | confessed having accompanied                                     |
| " 4, Manzing,                   |                               | the party which attacked and                                     |
| " 5, Boka <i>alias</i> Thesing. |                               | wounded prosecutrix and killed                                   |

her son and daughter, and that they plundered the house and retreated to the jungles but they took no active part in perpetrating the murder. Their confessions before the Magistrate are much to the same purport they accompanied the party, but they retracted before the Jury their former admissions and urged that they were induced by the darogah to say that they accompanied the party, which would get them released. Witnesses cited by them to prove this have not been forthcoming.

The Jury and Magistrate find the prisoners guilty of the 2nd count of the charge of being accomplices in the wounding of prosecutrix and murder of her son and daughter, and plunder of property to the value of 6 Rs. 11 annas.

The voluntary confessions, proved by witnesses of the prisoners before the darogah and Magistrate though retracted before the Jury, coupled with the circumstantial evidence of Meeling No. 11 witness, and the evidence to the *sooruthal* in the bodies leave no doubt in my mind of the prisoners being active accomplices in this lawless outrage of dacoity with wounding and murder and plunder of the prosecutrix's property, and as there is no extenuating circumstance exculpating them in the slightest degree, I recommend that the prisoners Manzing Garrow and Boka *alias* Thesing be both sentenced to imprisonment for life with labor and irons in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It is true that the confessions of the prisoners in this case do not shew them to be principals in the crime charged; and there is no evidence of their being the actual

perpetrators. But the circumstances of the murders are so atrocious, and the confessions of the prisoners, and the evidence of witness No. 11, fix so fully complicity upon them, that we consider, both as an example, and as there are no extenuating circumstances, (which is likewise recorded by the Deputy Commissioner as his opinion,) the sentence should be a capital one. We sentence the prisoners accordingly.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

*Trial No. 8.*

GOVERNMENT AND RAMKOOMAR MITTRE AND  
CALLY DOSS JOOGEE

*versus*

MOHOSUNOODDEEN AHMED ALIAS DOODOO MEAH  
(No. 14.) MAHOMED ESUF (No. 15.) WAJIBOOL-  
LAH SICKDAR (No. 16.) CHAND KAZEE KAREE-  
GHUR (No. 17.) GOLAMEE CHOWDRY (No. 18.)  
AKEL MAHOMED ALIAS AKALEE (No. 19.) BHOL-  
LAI KAREEGHUR (No. 20.) BEESHAI KAREE-  
GHUR (No. 21.) HURUM KHAN (No. 22.) AND BAD-  
OLLA KAREEGHUR (No. 23.)

*Trial No. 9.*

GOVERNMENT AND CHUNDEECHURN GHOSE, RAM-  
KANAICHUND AND GOLUCK CHUNDER GOOHO

*versus*

MOHOSUNOODDEEN AHMED ALIAS DOODOO MEAH  
(No. 24.) MAHOMED ESUF (No. 25.) WAJIBOOL-  
LAH SICKDAR (No. 26.) CHAND KAZEE KAREE-  
GHUR (No. 27.) AMEENOODDEEN SICKDAR (No.  
28.) GOLAMEE CHOWDRY (No. 29.) BEESHAI KA-  
REEGHUR (No. 30.) BHOLAI KAREEGHUR (No.  
31.) AKEL MAHOMED ALIAS SHEIKH AKALEE (No.  
32.) WUZEER MAHOMED (No. 33.) NYMODDEEN  
SHEIKH (No. 34.) AND KURREEM KHAN (No. 35.)

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Case of  
DOODOO  
MEAH  
and others.

Doodoo Me-  
ah released,  
for want of  
sufficient legal  
evidence.  
Other prison-  
ers convicted.

CRIME CHARGED.—Trial No. 8, prisoner No. 14, 1st count, ordering the riot and plunder; 2nd count, being accessory to the riot and plunder both before and after the fact; 3rd count, ordering the commission of dacoity, and 4th count, accessory both before and after the fact.

*Prisoners Nos. 15 to 23.*—1st count, riotously attacking the Parapore cutcherry of Callykoomar and Kasheechunder Chowdry,

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DOODOO  
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&c. and the house of Collydoss Joogee and plundering property to the amount of Rs. 306-8; 2nd count, dacoity on the Paranpore cutcherry of Callykoomar and Kasheechunder Chowdry and the house of Collydoss Joogee and plundering therefrom property to the amount of Rupees 306-8.

*Trial No. 9.*—Prisoner No. 24, 1st count, with having ordered the riot and plunder; 2nd count, being accessory to the riot and plunder both before and after the fact; 3rd count, ordering the commission of the dacoity; 4th count, accessory both before and after the fact.

*Prisoners Nos. 26 and 34.*—1st count, with riotously attacking the houses of Chundeechurn Ghose, Ramkanyechand and Goluckchunder Goocho and plundering property to the amount of Rs. 3,242-0-6; 2nd count, false imprisonment of Moolye, the servant of Chundeechurn Ghose; 3rd count, receiving and possessing portions of the plundered property knowing them to be such; 4th count, dacoity in the houses of Chundeechurn Ghose, Ramkanyechand and Goluckchunder Goocho and plundering property to the amount of Rs. 3,242-0-6; 5th count, receiving and possessing portions of the plundered property knowing them to have been acquired by dacoity.

*Prisoners Nos. 25, 27, 28, 29, 30, 31, 32, 33 and 35.*—1st count, with the said riotous attack and plunder; 2nd count, false imprisonment of the said Moolye; 3rd count, dacoity in the houses of Chundeechurn Ghose, Ramkanyechand and Goluckchunder Goocho, and plundering therefrom property to the amount of Rs. 3,242-0-6.

CRIME ESTABLISHED.—*Trial No. 8*, prisoner No. 14, accessory before the fact to the crime of riot and plunder and Nos. 15 to 23, riot and plunder. *Trial No. 9*, prisoner No. 24 and Nos. 25 to 35, the same as in the trial No. 8.

Committing Officer.—Mr. J. H. Ravenshaw, officiating Joint-Magistrate of Furreedpore.

Tried before Mr. J. E. S. Lillie, Sessions Judge of Dacca, on the 25th April, 1857.

*Remarks by the Sessions Judge.*—The cases in calendars Nos. 4 and 5, being connected together, and the greater part of the prisoners being implicated in both cases, it will be convenient to include them in one decision, but to relate the particulars of each case separately.

The evidence for the prosecution in calendar No. 4, is as follows. On the morning of the 19th of November, a force of armed *lattials* attacked the Poranpore kutcherry, broke open boxes, and carried off Rupees 127-14, the amount of collections, some bundles of papers, and personal property, consisting of dishes, clothes and the like, the value of which is estimated at rupees 5-8½, belonging to Ramkoomar Mittre. The property of other gomashitas has been entered in the schedules filed

before the police, but as those gomashtas have not been examined, there is no proof of the plunder of their property. The rioters then attacked the house of Callydoss Jogee, who was absent at the time, and plundered it in a similar manner of property valued at Rupees 153-9- $\frac{1}{2}$ . It is stated that all the prisoners with the exception of Doodoo Meah No. 14, were recognized among the rioters, that Mahomed Esuf and Wajiboollah Sickdar, prisoners Nos. 15 and 16, were the leaders; and that they gave out that the attack was made by order of Doodoo

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Meah. Witnesses Nos. 6 and 7,\*

\* Afazoodeen and Rokandee. have deposed that passing the house of Chand Kazeo Kareeghur, prisoner No. 17, in Sattara-rassee, and seeing a number of persons they asked the reason of the collection and were told that Doodoo Meah was in the house: that they went in to see him, and that they heard him give direction to prisoners Nos 15 and 16, to plunder the Porampore kutcherry and the house of Chundeechurn Ghose.

The evidence for the prosecution in calendar No. 5, is as follows. On the morning of the 20th of November, a force of armed *lattials* attacked the house of Chundeechurn Ghose in the village of Brahmandee, broke open boxes, and carried off property valued at Rupees 2,319-13. They also destroyed chandeliers, wall-shades and every thing they could lay their hands on. They were further stated to have carried off Moolye, a servant of Chundeechurn Ghose, who has not since been heard of. The rioters then first proceeded to the house of Ramkanai Chand, which they plundered of property valued at Rupees 856-13; and afterwards to the house of Goluckchunder Goolho, which they plundered of property valued at rupees 65-6 $\frac{1}{2}$ .

The Joint-Magistrate having visited the plundered houses a few days after the occurrence, I deemed it desirable to take his evidence. His description of the appearance of the houses strongly corroborates the evidence of the other witnesses.

A gun was found in the house of prisoner No. 26, which he claims, but which his witnesses have not identified, and another gun was produced by the mother of prisoner No. 24. Both those guns have been identified as the property of Chundeechurn Ghose.

As in the former case Mahomed Esuf and Wajiboollah, prisoners Nos. 25 and 26, are said to have been the leaders, and to have given out that they acted under Doodoo Meah's orders; and the remaining prisoners are said to have been recognized. Afazoodeen and Rokandee, witnesses Nos. 22 and 23, have repeated the evidence they gave in the former case; and witnesses Nos. 13 and 16, have deposed that they went to see Doodoo Meah at Sattara-rassee on the day previous to this occurrence, and that they heard him give directions to plunder Chundeechurn's house and to seize and bring him. Witness No. 24, has averred that he heard those orders, but he has so

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prevaricated in regard to the day on which he alleges to have heard them, that no reliance can be placed on his evidence.

The reasons given for the attacks in the two cases are, that Doodoo Meah wished to take a farm from Rajkoomar Chowdry and others, the zemindars of Abloolabaz, to which the Poranpore kutcherry appertains, but that the farm instead of being given to him, was given to Chundeechurn Ghose; that the house of Callydoss Joogee was plundered because it is close to the Poranpore kutcherry; that Ramkanai Chund has had a dispute for some time with Doodoo Meah concerning some land situated in the above mentioned zemindary, and that Goluckchunder Goocho is a ryot of Ramkanai Chund.

The prisoner Doodoo Meah states in his defence that he was ill at his house in Bahadoorpore (a distance of a few hours) at the time of the alleged occurrences: he affirms that the case has been got up against him by his enemies; and he points out discrepancies and inconsistencies in the evidence for the prosecution. Thirty-six witnesses have deposed that they saw him at Bahadoorpore about the time in question. Most of the other prisoners plead *alibis*, and produce witnesses to prove them. The prisoners Bholai Kareeghur and Beeshai Kareeghur, after they were accused in these cases, preferred counter-charges against Chundeechurn Ghose of having plundered their houses; but there can be little doubt that their charges are false. Mr. Reid, an indigo planter cited by the prisoner Bholai has deposed that he saw him on the morning of the 20th of November, at the factory, which is about seven hundred yards from Brahmandee, and that he also saw from a distance parties of men.

The *futwa* of the law officer convicts the prisoners Mahomed Esuf, Wajiboollah, Chand Kazee, Golamee, Akel Mahomed *alias* Akalee, Beeshai, Bholai and Kureem Khan of riot and plunder in both cases; the prisoner Badoollah of that charge in the case in calendar No. 4, the prisoners Amcenooddeen, Wazeer Mahomed and Nymooddeen of that charge in the case in calendar No. 5, and the prisoner Doodoo Meah of being an accessory before the fact in both cases: and I concur in that decision.

I see no valid reason to discredit the asserted recognition of all the prisoners who are said to have been present at the plunder. Chundeechurn Ghose was examined on the day his house was plundered, and he named among a multitude of others all the prisoners engaged in the plunder of his house with the exception of Nymooddeen. The evidence of Ramkoomar Mittre was first taken on the 21st of November, and he named all the prisoners engaged in the plunder of the kutcherry with the exception of Akel Mahomed and Badoollah. Those omissions may have resulted from forgetfulness, or it is possible that Chundeechurn Ghose and Ramkoomar Mittre did not recognize those three prisoners, but their witnesses did.

If the evidence of the witnesses who assert that they heard Doodoo Meah give orders for the plunder, is to be believed, there can be no doubt of his guilt. There are circumstances which at first sight seem to throw doubt upon that evidence. Chundeechurn Ghose in his mofussil evidence not only does not mention that Doodoo Meah had come to Sattara-rassee, that he does mention that Doodoo Meah's brother and others had come to Chowdah-rassee (which is near Sattara-rassee) to organize the attack, showing that he must have had information of what was going on, witnesses Nos. 13 and 16, (of calendar No. 5,) reside in Brahmandee, and knowing that Chundeechurn Ghose's house was to be plundered, they not only do not inform him beforehand of that fact, but they afterwards also conceal the circumstance for some days. It may further be argued that Doodoo Meah would be unlikely to give orders in the public manner he is represented to have done. With regard to the evidence of Chundeechurn Ghose; it must be remembered that he only stated what he had heard, and that is possible Doodoo Meah might have come to Chand Majee's house without Chundeechurn Ghose being aware of it. It is probable that Doodoo Meah, without taking trouble to conceal his advent, would not be desirous to proclaim it, and that it would consequently be known only to few. The silence of witnesses Nos. 13 and 16, is certainly suspicious, and if their evidence were uncorroborated, I should place no reliance upon it. But the evidence of the witnesses Afazooddeen and Rokanoodeen is not open to the same doubt, there is nothing incredible in it; and as they had nothing to do with Brahmandee, it is natural that they should have delayed to disclose what they had heard. Afazooddeen is a disciple of Doodoo Meah, and both he and Rokanoodeen might be easily taken for followers of Doodoo Meah, and there is nothing inconceivable or surprising in his issuing orders before them. The evidence of Doodoo Meah's witnesses is not satisfactory or trustworthy. It is easy for unscrupulous witnesses to swear to a false *alibi*, and it is difficult to detect them. Most of Doodoo Meah's witnesses have failed to account for their being able to remember dates; and their evidence is uncorroborated.

Reflecting on all the circumstances and probabilities of the case; on the fact that the plunder was committed in the interest of Doodoo Meah; on the fact that the plunderers were his disciples and followers; on the fact that they gave out that they were obeying his orders; and on the evidence of the witnesses who aver that they heard the orders previously given, I am of opinion that the charge is clearly established against him.

It is laid down in the Nizamut Adawlut circular of the 17th of March, 1852 No. 80, that if a party go forth with the inten-

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tion to commit a robbery the crime amounts to dacoity, but if they go to a house with some other intention and then seize, and appropriate property the crime is riotous assault with plunder. It is obvious that the criminal intent in most cases can only be inferred. In the first case (calendar No. 4,) no object, but plunder having been disclosed in the evidence for the prosecution, I directed a count to be added charging the prisoners with the higher crime; and for the sake of uniformity I afterwards issued a similar order in the other case also: but reviewing the whole circumstances, and referring to the precedents of the Nizamut Adawlut in such cases, I consider the lower crime to be established.

It appears from the proceedings of other cases that Doodoo Meah has recently been convicted of illegally confining for several days, two persons who had been carried off by his followers after property had been plundered in the matters related in the present cases; that the Joint-Magistrate's sentence in that case has been upheld in appeal by my predecessor; and that Doodoo Meah has also been convicted by the Joint-Magistrate on several other charges of oppression.

Regulation XV. of 1814, empowers a Circuit Judge (now Sessions Judge) to reduce the sentence of a prisoner convicted of two or more distinct offences included in separate commitments to imprisonment for a term of fourteen (14) years. It follows that a Sessions Judge under such circumstances can pass a sentence up to that limit. At volume 5, page 299 of the Nizamut reports, the Court observe "it was incumbent on him (the Sessions Judge) to have taken up all the commitments in which the prisoners were concerned, as directed by Clause I. Section 2, Regulation XV. of 1814, and to have passed sentence on those he convicted himself, where he was of opinion that a sentence not exceeding fourteen years was (not) inadequate to the offence or offences proved against them, until the sentence of a prisoner reached that maximum."

In conformity with that law, I sentence Mohosunuddeen Ahmed *alias* Doodoo Meah to be imprisoned for fourteen (14) years with labor in irons in banishment, and to pay a fine of rupees 3,529-0-6 under the provisions of Act XVI. of 1850; Mahomed Esaf and Wajiboollah Sikdars to ten (10) years' imprisonment with labor in irons in banishment, and to pay a similar fine of rupees 3,529-0-6; Chand Kazee Kareeghur, Golamee Chowdry, Beeshai Kareeghur, Bholai Kareeghur, Akel Mahomed *alias* Sheikh Akalee and Kureem Khan to be imprisoned for seven (7) years with labor in irons and to pay a similar fine of rupees 3,529-0-6; Badoollah Kareeghur to be imprisoned for three (3) years with labor, the labor to be remitted on payment of a fine of rupees 25, and also to pay a fine under Act XVI. of 1850 of rupees 287; and Ameenudddeen Sikdar, Wazeer Maho-

med Kareeghur and Nymuddeen Sheikh to be imprisoned for five (5) years with labor in irons, and to pay a similar fine of rupees 3,242-0-6. The fines under Act XVI. of 1850, to be leviable from all the prisoners jointly and severally, and the proceeds to be distributed among the persons whose property has been proved to have been plundered.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.)

*Mr. G. Loch.*—The prisoner, Doodoo Meah (No. 14, in Calendar No. 4, and No. 24, in Calendar No. 5,) has been convicted of giving orders to plunder the Poranpore kutcherry and the house of Cally Doss Joogee, on the 4th Aghaun, 1263,—18th of November, 1856, and the houses of Chundeechurn Ghose and others, on the 5th Aghaun. The other prisoners are convicted of having plundered the said kutcherry and houses on the days respectively mentioned.

The evidence, to prove the prisoner, Doodoo Meah, an accessory before the fact is entirely distinct from the evidence against the other prisoners, and must be considered separately. It is alleged that previous to the riot, Doodoo Meah came to the house of Chand Kareeghur, prisoner Nos. 17 and 27, at Sattarassee, and gave orders to Wajiboollah Sikdar, prisoner Nos. 16 and 26, and Mahomed Esaf, Nos. 15 and 25, to commit the riot and plunder. The proof of this fact is the evidence of the witnesses, Afazooddeen, No. 6, and Rookunoddeen, No. 7, Calendar No. 4. These witnesses state that on Tuesday in the beginning, or 4th or 5th of Aghaun, they came from Dushazaree and stopped at Chand Kareeghur's house, which they entered, hearing that Doodoo Meah was there; and *heard him give the orders for the attack and plunder of the Poranpore kutcherry and of Chundeechurn's house.* This evidence does, on examination, appear to me unworthy of credit. The witnesses are both inhabitants of Poranpore. Each witness says that he had on the day in question been to look at his boat in mouzah Dushazaree; that towards evening, he was returning and seeing a number of people at Chand Kareeghur's house and ascertaining that Doodoo Meah was there, curiosity induced each of them (No. 6, being a disciple of the prisoner) to enter, as they had never seen him (Doodoo Meah) before. Each witness saw him seated in a particular place, heard him give a special order, went away to his own house, and *told no one.* As justly remarked by the Counsel for the prisoner, it is very improbable that these witnesses should both be at Dushazaree at the same time, leave it at the same hour, follow the same road to Chand Kareeghur's house, arrive there exactly at the same moment, hear the same words from the mouth of the prisoner; and those only; should then leave Chand Kareeghur's house at the same time and arrive at their own houses, which adjoin; and should

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neither have seen nor spoken to each other. To the Magistrate both these witnesses deposed that they told no one that Doodoo Meah had given the order. At the Sessions, being asked how they were cited as witnesses to this one point, if they had kept their own counsel, the witness No. 6, says he did not from fear mention that Doodoo Meah had given the order, till after the riot had taken place; but afterwards he met the prosecutor, Ramkoomar Mitter, one day as he was returning from the Lochungunge *haut*, and informed him. The other witness No. 7, says that he did not tell any one of Doodoo Meah's order on the day he heard it; but subsequent to the riot and plunder he met the prosecutor on the Friday following in one Soroop Chowdhry's shop, where he, witness, went to make purchases and told him. The prosecutor, however, has not mentioned these parties as his witnesses in his information to the darogah, and though before the Magistrate he brings forward Afazooddeen and Rookunuddeen as his informants, yet before the Sessions Judge he deposes that he heard of the expected arrival of Doodoo Meah from *some Kareeghurs* who passed by the cutcherry. At the Sessions, the witness No. 7, says he saw witness Afazooddeen, standing a few cubits distant in Chand Kareeghur's "*oothan*;" but he does not appear to have spoken to him; and Afazooddeen deposes, that he saw no one there, whom he identified, except the principal actors, Doodoo Meah, Wajiboollah, and Mahomed Esaf. The improbability of this evidence, and the manner in which the witnesses came and went, render their testimony to my mind utterly unworthy of credit. These witnesses were examined by the darogah, as to the fact of the plunder of the cutcherry, not because they were called by the prosecutor, but because they lived in the immediate vicinity; and they stated that they heard Doodoo Meah give the order.

In Calendar No. 5, we have, in addition to the evidence of Afazooddeen No. 22, and Rookunuddeen No. 23, the evidence of Goluckchunder Raha No. 13, Kibulkishen Doss No. 16, and Ekramoollah chowkeedar No. 24, to prove that the prisoner, Doodoo Meah gave the order for the plunder of Chundeechurn's house. From the statements of the last three mentioned witnesses it would appear that the order for plundering Chundeechurn's house was given on two separate dates, viz. on Tuesday, as heard by the witnesses, Afazooddeen and Rookunuddeen, and on the Wednesday, by the witnesses Nos. 13, 16 and 24. The evidence of the chowkeedar No. 24, is unworthy of credit, as his original statement to the darogah contradicts his subsequent deposition to the Magistrate; and the Sessions Judge does not appear to have relied on his evidence for conviction. As regards the evidence of witnesses Nos. 13 and 16, the Sessions Judge considers it open to suspicion; the fact they speak to, viz. the order given by Doodoo Meah to plunder

Chundeechurn's house not being mentioned by either of them to any one till they gave their deposition before the Magistrate ; and the Sessions Judge remarks that had it not been corroborated by the testimony of Afazooddeen and Rookunuddeen, he should have rejected it. The evidence of the witness No. 13, sets forth that on Wednesday afternoon at "four *dundos bakée takite*" hearing that Doodoo Meah had come, he went to see him, and found him seated in Chand Kareeghur's outer yard, and heard him give directions to Wajeeboollah and Esaf, to plunder the house of Chundeechurn, and to seize the owner. Hearing this the witness ran away. The witness No. 16, deposes that he went at the same day and time as the other witness to pay his respects to Doodoo Meah, and heard him give orders to Wajeeboollah and Esaf to seize Chundeechurn, and plunder his house, on which the witness went home. Both these witnesses were examined by the police ; and they then stated that they *had heard that* Doodoo Meah had given such an order. It appears to me very improbable that those witnesses, who are Hindoos and live in Pooranpore, should, on the very day that the Pooranpore cutcherry was plundered, and the neighbourhood in confusion and terror, venture into the lion's den, as it were, and appear among Ferazees excited by their late act of riot and plunder. It seems also very improbable that Doodoo Meah having on the previous day given the order for Chundeechurn's house to be plundered, should a second time give the order, as if it were a new idea, and just at the convenient moment, when these two witnesses, unknown to each other, arrived opportunely in his presence, and that hearing what he said, they should both have at once departed, *but* should have seen nothing of each other, though both live at Pooranpore. The Sessions Judge admits their testimony, because it is corroborated by that of Afazooddeen and Rookunuddeen. The evidence of these two witnesses has been shown to be unworthy of credit ; and in consequence, as well as from the improbability of and delay in giving their testimony, the evidence of the witnesses Nos. 13 and 16, must also be held unworthy of credit. In my opinion the direct evidence against the prisoner Doodoo Meah cannot be trusted.

It may be urged that even if this evidence be rejected, there is a strong presumption that these outrages were committed by the orders of the prisoner Doodoo Meah. The rioters were his disciples ; they declared themselves to be acting under his orders ; and there was a cause of quarrel between him and the prosecutors. It is proved that he was at Suttara-russee, at the time of the occurrence ; the outrage was for his benefit ; and his disciples without his orders, or without his sanction, would not have committed this breach of the peace which could not benefit them. Admitting these premises, yet I do not think

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conviction can follow. Were the presumption arising from them sufficient for the prisoner's condemnation, there ought to be no difficulty in suppressing the agrarian riots in Bengal; for then every landholder for whose benefit, or by whose ryots, a breach of the peace is committed, would be virtually responsible for the acts of his servants and defendants. Such a presumption, however, has never been considered by this Court as sufficient for conviction; nor do I think it can be admitted in the present instance. I would acquit this prisoner.

With regard to the other prisoners, I see no necessity for interfering with the sentence passed upon them by the Sessions Judge. It is proved by the evidence of independent witnesses that they were engaged in the various acts of riot and plunder, with which they are charged. They, with the exception of Bolaye, plead an *alibi*; but the evidence being chiefly that of their co-religionists cannot be trusted. I would dismiss their appeal. The prisoners should be made *jointly and severally* responsible for the fine of Rs. 3,529-0-6, and not as may be understood from the Judge's order *each* liable to a fine of that amount.

*Mr. H. V. Bayley.*—The first prisoner is Mohosunooddeen Ahmed, *alias* Doodoo Meah. He is entered as No. 14 of the calendar No. 4, and No. 24 of calendar No. 5, and has been convicted by the Sessions Judge and Law Officer of being an accessory before the fact in riot and plunder; that is to say, of having procured, counselled, commanded or abetted a riot, and plunder, at the Poranpoor cutcherry premises in case No. 4, and at those of Chunderchurn Ghose in No. 5.

I am quite satisfied from the evidence on record, that the acts of riot, and plunder charged did actually take place. The appeal of this prisoner has therefore to be decided only with reference to the proof against him individually, as to the charge and conviction affecting him.

That proof consists of the *direct* testimony of witnesses, Nos. 6 and 7 (Afazooddeen and Rookunooddeen) in Calendar No. 4, and of the direct testimony of witnesses No. 13, Goluck Raha, No. 16, Kebulkisto, No. 22, Afazooddeen, No. 23, Rookunooddeen and No. 24, Ikramoolah, in Calendar No. 5. And *circumstantially* of such probabilities as the facts on the record shew, in *support* of the credibility of the direct testimony of the above witnesses.

The five witnesses above referred to directly depose that *they heard Doodoo Meah give the orders for the riot, and plunder*; and the facts on the record, in support of the credibility of their testimony, are, that there was a refusal on the part of the prosecutor's principal (Cashi Chowdry) to give Doodoo Meah a farm, which the latter wished to have, and had reason to expect would be given him; that Doodoo Meah had thus a revenge to

gratify against Cashi Chowdry, while the other prisoners had none on their own account; that the rioters and plunderers were known to be Doodoo Meah's followers and declared themselves to be acting by his orders; that Doodoo Meah was in the neighbourhood, and his own residence (Bahadoorpore) was about a three hours' distance from the place of the riot and plunder, and the notorious influence of Doodoo Meah over the Ferazees is such that they would not act in a case of this nature except by his orders.

Mr. Peterson, for Doodoo Meah, has urged that the testimony of the witnesses, who directly depose to having heard Doodoo Meah give the orders for the acts of riot and plunder, is not credible, owing to the defects and inconsistencies in it; he has also urged that where there are such defects, affecting the credibility of the testimony of the witnesses as legal evidence, no notoriety of Doodoo Meah as chief of a peculiar sect of Mahomedans, and no probabilities, unsupported by legal evidence directly connecting the *particular* acts of the rioters with orders or counsel, clearly proved to have been given by Doodoo Meah for *those* acts, can weigh at all against this prisoner.

With reference to these pleas, I would first state how far I consider the probabilities of the case may be judicially accepted in support of the conviction; and then record my view as to the direct testimony of the five witnesses.

Without allowing in the slightest degree the well-known position of Doodoo Meah, as a religious leader of Ferazees, or as one said to be notorious for turbulence, and frequently imprisoned on conviction of offences against the peace of the country, to affect my judgment in this case, I think it is both legal and just, that if the record shews that the other prisoners are Doodoo Meah's followers or under his influence, that they said they were acting under his orders in committing the offences charged, that *he* had a strong motive against the parties injured, and the actors themselves had none, that he had and the other prisoners were shewn to have been in the neighbourhood together, at the time, at the house of one of his followers, and that the acts of riot and plunder charged followed directly or very shortly on such a meeting, these facts should be considered strong probabilities in the case, judicially admissible to weigh against Doodoo Meah, *in support* of the direct testimony of the witnesses who depose that Doodoo Meah ordered the acts done by the other prisoners; or in other words was an accessory before the fact, of which he is convicted by the Sessions Judge and Law Officer. I would go further, and say that such strong probabilities might be allowed to supply defects in the testimony of the witnesses, unless that testimony be of such a character as to leave no other reasonable conclusion than that those witnesses never did see what they say they saw, viz. Doodoo Meah

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sitting in the house of Chand Kareeghur (prisoner No. 17 of Calendar No. 4 and No. 17 of Calendar No. 5)—and never did hear what they state they did hear, viz. Doodoo Meah giving the orders, for the riot and plunder charged in the two Calendars, to Mahomed Esaf (prisoner No. 15 of Calendar No. 4 and No. 25 of Calendar No. 5) and to Wajeeboollah Sickdar, prisoner No. 16 of Calendar No. 4, and No. 26 of Calendar No. 5.

The witness No. 6 of Calendar No. 4, Afazooddeen, testifies before the Magistrate to the bare facts that he was coming from seeing his boat at Dushazaree, when, as he was passing Chand Kareeghur's house, he heard Doodoo Meah order Mahomed Esaf and Wajeeboollah, with whom were fifty or sixty others, to plunder the Poranpoor cutcherry and the house of Chundeechurn Ghose. This witness states that he *at once went home and told no one of his having heard this*. The Magistrate in no way tested this evidence, and the whole substance of it is given in the above.

The same witness before the Sessions Judge repeats the above as stated to the Magistrate, but adds that Doodoo Meah *said also* that the reason of his order was that Cashi Chowdry oppressed the disciples i. e. the Ferazees. The witness states that he did not go up to Doodoo Meah; but heard the words at a distance of four or five cubits; that he went to see Doodoo Meah as he had never before seen him, *that he remembers nothing else that was said*, and that he told no one *that day*, of what he had heard. This witness was next asked how then it happened that he was called as a witness; and replied that on the Friday, as he was returning from the Lochungunge *haut*, he apprized the prosecutor, Ramkoomar Mittre of what he had heard, and that thus prosecutor learnt what this witness knew, and named him accordingly. This witness states that there are two roads from Dushazaree to his own house; that *he (witness) was alone*, that *from fear* he did not mention what he heard on the day he heard it, that the witness No. 7, Rookunooddeen is his near neighbour, and that he (witness No. 6) is a disciple of Doodoo Meah.

I consider that the fact of this witness Afazooddeen, only hearing this order as the one matter of conversation, his not mentioning it, being a Ferazee and on the spot, not going amongst the other fifty or sixty Ferazees around Doodoo Meah, together with the doubtful statement the witness makes as to how the prosecutor came to be apprized by the witness of what he heard, and was then named as a witness, are points tending very much to throw discredit upon his testimony.

Witness No. 7, Rookunooddeen, states before the Magistrate, that on Tuesday the 4th or 5th Aughan he went (also) to Dushazaree, and was returning about the same time in the evening as the previous witness, when he heard from *the Kareeghurs*, that Doodoo Meah had arrived at Chand Kareeghur's house that

the witness therefore went to see him; that the witness heard himself the order of Doodoo Meah, in the same terms as those given by witness No. 6, before the Magistrate, and *went home, but did not tell any one what he had heard*; and that he lives about an hour or so off Chand Kareeghur's. This is the total substance of this witness's deposition before the Magistrate. Before the Sessions Judge he states he went to Dushazaree to see after the roofing of his boat; that on arriving near Chand Kareeghur's he heard from *fourteen or fifteen people on the road*, that Doodoo Meah had come; that he went to see him from curiosity, having never seen him before; that he then heard at a distance of five cubits the order by Doodoo Meah for the plunder of the Poranpoor cutcherry and Chundee Ghose's premises; *and then went home*. This witness adds that he attended to the order for the riot and plunder, and not to other matters of conversation, because those related to doctrines of Mahomedan law; e. g. the sin of neglect of prayer. This witness states that no one else was with him; that he lives about an hour's journey from Chand Kareeghur's; that he appeared as a witness, because prosecutor named him, and that prosecutor named him because witness No. 1 *on the Friday, after the riot and plunder at Ramkoomar's, told Ramkoomar in Suroop Chowdry's shop that he (witness) had heard the order given*. This witness further says that he and witness No. 6 are close neighbours; that he saw witness No. 6 at Chand Kareeghur's, but did not speak to him; and that they are ryots of the same landlord; lastly, that he, witness, is a follower of no one in matters of religion.

In regard to this witness's deposition as to the manner in which he came to be called as a witness, I have to remark that the prosecutor, Ramkoomar, before the Magistrate says that he was *told of Doodoo Meah's arrival by these witnesses Nos. 6 and 7*, but he does not say that he met the latter at Suroop Chowdry's, or was told by him there, of Doodoo Meah's orders. Indeed Ramkoomar after giving the details of the riot and plunder by Doodoo Meah's followers, was asked at the Sessions how he knew Doodoo Meah had been on the spot? and replied "*Kareeghurs are always passing the cutcherry—I heard from them.*" I may add that Suroop Chowdry is not called to support Rookunooddeen's statement.

To proceed to Calendar No. 5, viz. the riot and plunder at Chundeechurn's premises. Witness No. 22, the above Afazooddeen, and witness No. 23, the above Rookunooddeen, to the Magistrate, made the same statements they did in the case in Calendar No. 4, relative to the double order by Doodoo Meah for the plunder of the Poranpoor cutcherry and of Chundee Ghose, as heard by them separately, on the one and same occasion, i. e. on the *Tuesday*. They repeat to the Magistrate that they did *not on that day tell any one*. Before the Sessions Judge both

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these witnesses merely refer to their evidence given as witnesses in Calendar No. 4.

In this case in Calendar No. 5, however, *three more* witnesses are adduced to testify they heard Doodoo Meah give the order on the *Wednesday* for the riot and plunder of the premises of Chundeechurn Ghose.

Of these, witness No. 24, Ikramoollah chowkeedar, states to the police that he had *heard of* Doodoo Meah having given the order on the 4th Aughun: that is the *Tuesday*; for the witness goes on to say that the riot and plunder at the Poranpoor cutcherry and Kalee Jogee's were the next day, and at Chundee Ghose's and Goluck Goocho's the *day after that*. Now the first was on the Wednesday, and the last on the Thursday. This witness deposes before the Magistrate that he *himself heard Doodoo Meah on the Wednesday* ask Wajiboollah, if he could plunder Chundee Ghose's house; that Wajiboollah replied in the affirmative; and that he (witness) had never seen Doodoo Meah before. He proceeds to describe Doodoo Meah's dress and position at Chand Kareeghur's, and concludes by saying that he went to see Doodoo Meah with the knowledge of the riot and plunder at the Poranpoor cutcherry that day. He makes the same statement to the Sessions Judge, but adds that *he went alone, and told no one of having heard Doodoo Meah give the order, for fear*. But being asked how he was called as a witness, he replies that hearing Doodoo Meah give the order, he subsequently *informed the darogah* of his having heard him do so, and was called accordingly.

The statements of this witness are most unsatisfactory. His not having mentioned to the police that he himself heard Doodoo Meah give the order; his going to see Doodoo Meah for the first time after the riot and plunder of that day, and knowing and describing him so minutely, never having seen him before; and his silence as to his having heard the order, are, each and all, strong grounds for discrediting his evidence.

Witness No. 23, Goluckchunder Raha, *did not mention at the police* that he had heard Doodoo Meah give the order as to the riot and plunder at Chundeechurn's premises. This witness says to the Magistrate that he heard from the *villagers* of Doodoo Meah's arrival; that he himself heard from a distance of about ten cubits Doodoo Meah give the order; and that he, witness, then at once ran off home. He deposes that he saw the riot and plunder next day at Chundeechurn's; and that Esaf and Wajiboollah then said they were acting by Doodoo Meah's orders. He further describes the particulars of the riot and plunder, and names the other prisoners. This witness deposed before the Sessions Judge that he heard Doodoo Meah give the order, *and preface it by the words*: "You yesterday plundered the Jogee's house and Chowdry's cutcherry," and

that *after* the order Doodoo Meah said: "You will soon have to go to Fureedpoor." This witness to the Sessions Judge says that the *Ferazees* told him, witness, that Doodoo Meah had come; and that when witness went to Chand Kareeghur's and heard Doodoo Meah give the order, he, witness, went alone; and was alone. He states *he told no one* that he heard Doodoo Meah give the order, although the prosecutor Ramkanai named him as a witness to hearing this order.

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Witness No. 16, Kebulkisto Doss, did *not state to the police* that he himself heard Doodoo Meah give the order. He does, however, say so to the Magistrate and to the Sessions Judge. In the Court of the latter he adds that he went alone to Chand Kareeghur's, and that he told no one. He states that Doodoo Meah said, in addition to the order for the riot and plunder of Chundeechurn's premises, "I have committed other outrages and have never been detected." On being asked why he was called as a witness, he replies, that having seen the plunder, he came forward to depose.

Thus to make the evidence of these *five* witnesses, who were each *alone, true*, each must separately have heard, two on one day and three on another, an order to riot and plunder, repeated five times as regards the charge in Calendar No. 5, and to the same persons, Esaf and Wajiboollah, in precisely the same place, and with the same surrounding circumstances; and heard no other matter; yet they never told any of this one important matter. Some say they were silent from fear, yet they came to depose as witnesses to the most material fact in the case, and that involving most risk to themselves.

Moreover, witnesses, Afazooddeen and Rookunooddeen, are very near neighbours; they both came by the same one of two roads from Dushazaree, where both had been on business connected with their boats; they neither depose to seeing each other at Dushazaree or on the road; they arrive at Chand Kareeghur's about the same time; they remain there about the same time; Rookunooddeen sees Afazooddeen, but does not speak to him; Afazooddeen does not say he saw Rookunooddeen; they heard each separately, and once, at the same distance, the same words uttered by the one man Doodoo Meah to the same two others, Esaf and Wajiboollah; and they depose that Doodoo Meah's appearance in their neighbourhood was, to them a novelty. It may then be fairly presumed that an extensive order to riot and plunder given by Doodoo Meah, and heard by them was also a novelty; yet they neither of them tell any one of it, though they both go home directly; and it may be added never see each other going home.

The statements of witnesses Nos. 22 and 23 made at the police differ materially from those made by them to the Magistrate and Sessions Judge. This in some degree renders their evidence



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defective, especially as I do not see, in the police proceedings, any desire to aid Doodoo Meah. Again, that two Hindoos, with no connection with Doodoo Meah, should intrude at his lodging on the very same day that his people by his orders had successfully plundered the Poranpore cutcherry of other Hindoos, is strange, to say the least. It may be said that if the five witnesses were tutored, and had colluded to depose falsely, they would have said that they were together, and referred to each other to corroborate their statements; but, on the other hand, it may be equally fairly inferred that where each witness said he was alone, each was safe from being contradicted by the cross-examination of any other witness.

In short, I do not believe any one of these five witnesses heard Doodoo Meah give the orders they swear they did hear him give.

As to the arguments on the improbability of Doodoo Meah's giving those orders so openly, I would merely remark that I lay no stress on it; for he may sometimes find it suit his purpose to act defiantly, and at others secretly.

There remain the probabilities before referred to by me, viz. 1st, that there was a refusal on the part of Cashi Chowdri to give Doodoo Meah a farm he wished to have, and had reason to expect would be given him; 2nd, That thus Doodoo Meah had a revenge to gratify against Cashi Chowdri, while the prisoners had none themselves; 3rd, That the rioters and plunderers were known to be his followers, and said they were acting by Doodoo Meah's orders; 4th, That Doodoo Meah was in the neighbourhood and his residence is not very far from the spot; and 5th, That his position is such that his followers would not commit deeds of this kind without his orders.

These are each and all strong probabilities, and so strong as to create a presumption, that Doodoo Meah did give the orders. Nevertheless where even I may have no moral doubt that the crimes charged were the consequences of his orders, and would not have been committed without them, I cannot convict on *probabilities only*. And in this case they are alone; they are not *in support* of weak evidence, but stand by themselves, while the evidence also stands by itself; that is, for the reasons given above, I look upon the evidence of the five witnesses called to prove they heard Doodoo Meah give the orders they depose to having heard him give, false; i. e. that they never heard him give those orders which they say they did.

I do not think therefore the conviction borne out by legal evidence in any way, and would acquit the prisoner Doodoo Meah.

The guilt of the other prisoners is clearly proved. The plea of Bolai, and the *alibis* of the others, are not proved at all in such a way that there can be no reasonable conclusion, but

that the prisoners could not have been present at the crimes charged. Mr. Reid's evidence is too vague to prove Bolai's pleas, or that of the others who call Mr. Reid I may add that the evidence of Ferazees has been held open to much suspicion when in behalf of Ferazees.\*

In regard to the pleas of many of the prisoners that they are not Ferazees, I would refer to the printed trial of Doodoo Meah in 1847, where the prisoners there raised the same plea.

I reject the appeal of prisoners Nos. 15 to 23 calendar No. 4, and Nos. 25 to 35 calendar No. 5.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

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bad.

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CRIME CHARGED.—1st count, having forged or procured to be forged, by altering the sum of 16 Rs. to 32 Rs. by erasure or some other way, a certificate originally prepared in the Judge's Office and received therefrom by the prisoner for the former amount, on account of value of stamped paper ordered to be refunded in the case of Luckheemonee Dashea and Juggessur Dey *alias* Panchanun Dey plaintiffs in a civil suit; 2nd count, uttering the above forged certificate knowing it to be forged; 3rd count, having knowingly defrauded Government of Co.'s Rs. 32, by means of the above forged certificate.

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Prisoner con-  
victed. Re-  
marks on  
Judge trying a  
case in which  
he is cited as a  
witness. Also  
as to Act I. of  
1848, apply-  
ing to miscel-  
laneous cases.

CRIME ESTABLISHED.—1st count, having forged or procured to be forged a certificate for the refund of stamp value by altering the sum of 16 Rs. to 32 Rs.; 2nd count, uttering the said certificate knowing it to be forged; 3rd count, having knowingly defrauded Government of Co.'s Rs. 32, by means of the above forged certificate.

Committing Officer.—Mr. W. C. Spencer, Officiating Magistrate of Moorshebad.

\* N. A. Report Vol. V. part 1, page 61, for 1855.

*Remarks by the Sessions Judge.*—On the evidence for the defence no reliance can be placed, they being merely all followers of Doodoo Meah and deposing for their co-religionists.

*Remarks by the Nizamut Adawlut.*—(Present : Messrs. A. Dick and J. H. Patton.) The prisoners make the same defence in appeal that they did in the Sessions Court, and the presiding Judge has recorded good reasons for rejecting it.

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Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 27th June, 1857.

*Remarks by the Officiating Sessions Judge.*—From a perusal of the papers accompanying this case, it appears, that the sheristadar of this Court on the civil side, reported some little time ago, viz. on the 21st April, to the Judge that a number of certificates for refund of stamp-value were not to be found in the office, and that their entry in the certificate book was not receipted by any one; on enquiry being instituted, and the mohurrir, under whose charge the book and certificates were, having reported that the parties interested had taken them, but that by some mistake the entry in the book had not been receipted, an order was passed by the Civil Judge to the effect that the parties who had taken the certificates should sign the book: and accordingly the prisoner without making any objection whatever to the Civil Judge, signed the book in the mohurrir's office, and among other entries of certificates signed that of the one now under investigation; a list of the certificates supposed to be missing was sent to the collector of this district for enquiry, and he reported that the list was correct with the accounts of his office, except that in the case of Luckheemonee and Juggessur plaintiffs in the Civil Court, a sum of 32 Rs. instead of 16 Rs. had been paid to the prisoner; the certificate having been sent in the usual course to Calcutta to the Accountant, the Civil Judge applied for it, and on its receipt he made over the prisoner who happened to be present in his Court, to the Magistrate for trial with a letter No. 115, dated 7th May, 1857, which is among the Magistrate's proceedings, the Magistrate committed the prisoner for trial, and it was yesterday completed before me.

The certificate book of the Civil Judge's Office, that of the collector, the Sudder Ameen's decree in the case of Luckheemonee Dashea and Juggessur *alias* Punchanun *versus* Rajib Shaha, dated the 25th April, 1854, and the copy of the copy of the Judge's roobakaree of reference to the collector, dated 29th July, 1854, sending the stamp-paper of the plaint in that case for inspection (the original roobakaree having been burnt among other useless papers in the Judge's Office) shew to my complete satisfaction that the certificate now before the Court was originally issued for 16 Rs. the half value of the plaint stamp in that

\* Ram Taran.

case, witness No. 1,\* distinctly deposes to his having written in the notice, at the foot of the certificate, the words 16 Rs. and that he wrote these words from seeing that 16 Rs. was written in column 5 of the certificate by his predecessor in that department, viz. witness No. 2; that he did not write the words 32 Rs. which now appear in that notice, and that he gave the certificate with 16 Rs. written on it to the prisoner on the 18th or

19th July last on the strength of a *mooktearnama* in the prisoner's name on the part of Luckheemonee Dashea and Juggesur *alias* Panchanun Dey presented to him by the prisoner, (this *mooktearnama* has also been burnt with other useless papers in the Judge's Office.)

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The witness No. 2,\* deposes that he wrote the body of that certificate in the regular course of his ministerial duties in that department, and that he wrote the words 16 Rs. in column 5 of the certificate, which certificate was duly signed by the sheristadar of the Judge's Court (since removed to another situation) who compared it with the plaint and the Judge's above cited *roobakaree* of the 29th July, 1854; this witness also satisfactorily explains that though before the magistrate he stated that he *thought* the words 32 Rs., now in column 5, were not written by him, yet now by seeing the words 32 Rs. in column 2, which is in his hand-writing, he is positive that the writing of those words in column 5, was not done by him, and this statement is borne out as above by witness No. 1, who says he wrote the words 16 Rs. in the notice at the foot of the certificate from seeing them written in column 5.

The witness No. 4,† a collectorate mohurrir, proves that the prisoner uttered the certificate by giving it to him in the usual course of business, and that he presented it before the collector, and obtained the order for payment of the 32 Rs.

The witness No. 3,‡ also a collectorate mohurrir, proves that on the receipt of the Judge's *roobakaree* of the 29th July, 1854, with the petition of plaint of Luckheemonee, &c. he wrote the entry of this certificate in the collector's certificate book in page 40, No. 112, and that in the 5th column of that entry he wrote the words "32 Rs. half 16 Rs." (which appears from the book to be the usual mode of entering memorandum of repayments) and that he did not cross the words half 16 Rs. with a line as it now appears in column 5, of that entry.

The witnesses, Nos. 6 and 7,§ prove the payment of the 32 Rs. to the prisoner.

§ Wit. No. 6, Rankisto Scin, Treasurer.

" " 7, Pramdhun Poddar.

|| Juggeshwar Dey *alias* Panchanun Dey.

The witness No. 9,|| proves that he and his aunt Luckheemonee sued one Rajib Shaha in the Sudder Ameen's Court, and that he was unaware that any order for refunding any portion of the amount of plaint stamp had been made, and that neither he nor his aunt ever gave any *mooktearnama* in the prisoner's name for the purpose of getting such refund or for any other purpose, and that he did not even

|             |                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1857.       | know the prisoner; and he and witnesses Nos. 10 and 11,*                                                                                                                                                                                                                                                                                                                                                                     |
| July 20.    | * Wit. No. 10, Baidonath. prove that the prisoner did not pay to Juggeshwar or his aunt or to any body on their behalf                                                                                                                                                                                                                                                                                                       |
| Case of     | " " 11, Gooroodoss.                                                                                                                                                                                                                                                                                                                                                                                                          |
| TARAPERSAUD | that 32 Rs. or any other sum, and finally No. 10, proves that                                                                                                                                                                                                                                                                                                                                                                |
| BHUTTACHAR- | the cousin (name unknown) of the prisoner's vakeel Shamachurn                                                                                                                                                                                                                                                                                                                                                                |
| JEA.        | Bhutto, and that vakeel's relative, Kristolall Bhutto, went to him for the purpose of tampering with him, and inducing him to take the 32 Rs. after the institution of the prosecution, and to enter the amount in his books which he declined to do, and that No. 9, also said that he received one letter unsigned, and two letters from one Dwarkanath Ghose, (whose signature to them he verifies,) to the same purport. |

The above facts prove to my satisfaction that the prisoner is guilty on all three counts of the calendar, as I see no reason whatever to doubt the evidence of those witnesses.

The prisoner was defended by that vakeel, Shamachurn Bhutto, and another vakeel, and they have filed a long defence, commenting upon the improbability of the evidence for the prosecution, and the probability of a mistake having occurred in the writing of the certificate by the witnesses Nos. 1 and 2, and that their evidence is partial, because in the event of such mistake they are answerable to the Civil Judge, but this plea is of no avail, as the entries in column 5, of the certificate and in the notice at the foot are plainly erased, and the words 32 Rs. have been clearly written in the places of the original amount, the prisoner though he declared in the foudjaree Court that he had received a *mooktearnama* for the purpose of obtaining the refund of plaint stamp for the plaintiffs in the civil case, does not attempt to prove that he did really receive such *mooktearnama*, and as the witness No. 9, proves that no such document was given to him, it therefore follows that the prisoner (who was not employed in the civil suit) could have learnt of the existence of the order for refund only from the decree of the Sudder Ameen, and it being an order for half the value of the stamp, and the certificate shewing in column 2, that the full value of the stamp was only 32 Rs., it was his duty as an honest man to point out the mistake in column 5, when he received the certificate, if it was a mistake, and he had no right to act as a thief and take the amount of 32 Rs., knowing that the order in the decree was for half that sum; the defence also attempts to take a most unfair advantage of the fact of witness No. 2, on seeing the certificate when giving his evidence, saying on the first casual glance that the body of the certificate was in his hand-writing, and thereby endeavouring to shake the value of that witness's subsequent statements, as the witness did not examine each column and say each was written by him, but merely generally stated that the body of the certificate was

written by him, while its heading and notice at the foot was written by another person.

The defence also comments upon the improbability of the prisoner having knowingly committed a fraud, as the collector's certificate book bears out the fact of the certificate being for 32 Rs. from the fact of the words half 16 Rs. being crossed with a line, but this is a point in favour of the prosecution, as in no other portion of column 5 of that book is there any erasure or correction in the amount to be paid, but in one other instance, and in that instance the collector's initials are affixed to the correction, so that had this been a mistake also, the words crossed would likewise have the collector's signature, which they have not; the vakeels also point out fifteen other certificates of the Civil Court (filed in the case) in which erasures or corrections occur without any signature of the Judge, thereby inferring that erasures are not generally signed by the Judge, but these erasures or corrections, if really there, which is doubtful, are most trifling, except in the certificate of case No. 119 for 1850, Bhoolummonee Debya plaintiff, in the notice at the foot of which there is a serious erasure, but this was, to my personal knowledge, brought to my notice as Judge by the ministerial officer in charge of the department, and was made because a wrong notice had by mistake been written in it.

The defence further comments upon what the prisoner's vakeels are pleased to call an improper order of the Civil Judge suddenly directing the prisoner to sign the certificate book, nine months after the receipt of the certificate, but as above explained there was no impropriety whatever in the order the Judge did give, and if there was, the prisoner has not been considered guilty on account of *that* signature and there was nothing to prevent his objecting to sign the book if he had not received the certificate, or to prevent his making known such objections to the Judge, which he did not do.

The defence also comments upon the third count, by saying that as the decree at any rate contained an order for payment of 16 Rs. the prisoner could not have defrauded the Government of 32 Rs. but this plea is worthless, as it is clearly proved that the prisoner had received no *mooktearnama* from the persons entitled to receive the refund, and yet he took by virtue of the certificate thus improperly obtained by him, the sum of 32 Rs. and appropriated it to other purposes than that he himself states he was empowered to receive the money for.

In cross-examining the witness No. 1, the prisoner elicited the fact of a person having accompanied the prisoner when he asked the witness for the certificate, that person asserting himself to have come on the part of the plaintiffs in the civil suit, but the witness did not know that person or that he really did belong to those plaintiffs, and as it is shewn that those plaintiffs

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knew nothing of the order for refund, the fact of the prisoner thus bringing a party to personate those plaintiffs' servant is an additional presumption of his guilt.

The certificate was signed by the Judge on the 18th July, the 20th idem was a Sunday and it was presented to the collector on the 21st idem, therefore it must have been in the prisoner's possession for at least two days, and yet he has produced no person as a witness to testify to the state it was in during that period.

The prisoner named me as a witness, because I happened to be officiating as collector at the time of the certificate being presented to the collector, and because, (as is fairly deducible from the facts elicited during trial,) of a hope that the case would be tried in some other district, and therefore the improper conduct of witness No. 4, Juggutnarain (which will be reported to the collector) and the gross impropriety of the prisoner's vakeel, Shamachurn Bhutto's relative's attempt to tamper with the witness No. 10, Buddinath to defeat the ends of justice and thus reflecting upon the conduct of the vakeel himself, might possibly not be brought to my notice; the prisoner declined examining any of the witnesses named by him in the foujdaree except me, and my statement was taken down by myself as directed in the letter No. 468, dated 12th June, 1857, of the Register of the Sudder Nizamut Court, but I was unable to give any evidence in the prisoner's favour, as I knew personally nothing of the certificate, except that on seeing it, I recognised my signature, which was undisputed.

The law officer convicts the prisoner on all three counts of the calendar and I concur in that conviction, and as it is necessary to make an example of a man practising as a *mooktear* in the Courts, as he was, when guilty of so heinous a crime, I sentence the prisoner, Tarapersaud Bhattacharjea, to (7) seven years' imprisonment with labor in irons in banishment from yesterday, and to a fine of 32 Rs. under Act XVI. of 1850, to be levied for the benefit of Government.

*Remarks by the Nizamut Adawlat.*—(Present: Messrs. G. Loch and H. V. Bayley.) The undisputed facts in this case are that the prisoner did obtain the certificate from the Judge's Office, and did by means of that certificate receive Rs. 32, from the Collector's Office. The facts disputed are 1st, that no forgery has been committed; 2nd, that there is no sufficient proof against the prisoner on any of the counts. The points of law, urged by the Counsel for the prisoner are 1st, that the Sessions Judge having been cited as a witness for the prisoner could not try the case; 2nd, that the alleged forgery having been made in a miscellaneous case, Sec. 1, Act 1. of 1848, does not apply, and therefore the Judge could not make over the case to the Magistrate for inquiry, there being no law by which he was authorised to do so; and that thus there was no prosecutor.

The fact of the Sessions Judge having been cited as a witness by the prisoner does not, by any law that we are aware of, or that has been pointed out, take the case, duly committed to him, out of his jurisdiction. He was further in reply to his enquiry of the 1st June, 1857, No. 202, upon this point, instructed by the Nizamut Adawlut to proceed with the case. The objection, urged by the Counsel in this plea, was disposed of by the Nizamut Adawlut on the 14th August, 1855, on a similar reference made by the Sessions Judge of Midnapore. With regard to the second legal objection we consider the law, Act I. of 1848, applicable as well to miscellaneous as regular cases. We, therefore, disallow the plea.

As regards the disputed facts, we find it in evidence that the sum of Rs. 16, was originally written in Column 5, and in the notice at foot of the certificate. The entry and notice are written by different persons; and had the entry in column 5, Rs. 32, been a correction, it is very improbable that a similar correction should be made in the notice; for the writer of it would have either copied the figures in column 5, as he found them, or if he referred to the record would have made a correct entry at once. That an alteration has been made admits of no doubt. It is further proved by witness No. 3, the Collector's head mohurrir, that the certificate was compared with the stamp on which the plaint was written, and with other papers received from the Civil Court; and the amount to be refunded Rs. 16, was entered in the Collector's book thus "Rs. 32, the half Rs. 16." It is evident, therefore, that a forgery, by altering the amount entered in the certificate, has been committed.

The prisoner has been convicted on all three counts. There is only a presumption of the first, and that not sufficiently violent to amount to sufficient proof. We, therefore, acquit him on that count. There is, however, in the opinion of the Court, sufficient proof against him as regards the 2nd and 3rd counts. It is unlikely the mohurrirs of the Civil Court should have altered the amount in the certificate, for it was not for their benefit. The alteration is palpable; and the prisoner as *mooktear* for the plaintiff, as he alleges himself to be, must have known that the order of the Sudder Ameen only entitled him to receive Rs. 16. His natural course would have been to bring back the certificate to the Judge, to point out the error, and show that an erasure had been made. Instead of doing this, the prisoner retained possession of the certificate, and presented it for payment, hoping, as it may be reasonably inferred, that after the lapse of two years, from the date of the entry in the Collector's Register, payment would be made without chance of discovery. We reject the appeal.

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Case of  
TARAPERSAUD  
BHATTACHAR-  
JEA.



PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND MUSST. MOHESHUREE

Midnapore.

*versus*

1857.

July 21.

Case of  
RAMAKANTO  
PANDAH  
and others.

Prisoners con-  
victed and sen-  
tenced capital-  
ly for murder  
by poison.

RAMAKANTO PANDAH (No. 5,) AND TARAPERSHAD  
CHUND ALIAS RAMOO CHUND (No. 6.)

**CRIME CHARGED.**—Wilful murder in having administered to Binodram Nund a pill mixed with white arsenic and another poison from the effects of which he died on the 23rd idem.

2ndly, The prisoner No. 5, is moreover charged with causing the said pill mixed with the poison to be administered to the deceased thereby causing his death.

**Committing Officer.**—Wuheedoon Nubee, Deputy Magistrate of Nugwa.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 8th May, 1857.

*Remarks by the Sessions Judge.*—The circumstances of the case are as follows :

Ramakanto Pandah the prisoner No. 5, is the uncle of the prosecutrix and is charged with the murder of her husband Binudram Nund.

There appears to have existed for some time, a bad feeling between the said prisoner and the members of the family of his brother the late Narain Pandah, litigation in regard to their ancestral property ensued,\* the family had separated, and lived

\* Prosecutrix, Ramoo Mytee. in different apartments of the common dwelling-house. Narain

Pandah's only son died, leaving his widow Brimomohee witness No. 1, and a boy surviving him. The prosecutrix also bore a son to her husband, the deceased. These children, were the male heirs to Narain's property after the death of his son, the brother of prosecutrix. The women with their children lived under the protection of the deceased. One of the children died seven or eight years ago, the other two or three years afterwards. After their death no hindrance remained to Ramakanto Pandah's (prisoner No. 5,) succeeding to the whole of the ancestral property unless the prosecutrix, Moheshuree, bore another child to her husband, the possibility of which has been removed by the wretched death of the deceased under the following circumstances.

Some time before Binoderam's death, the prisoner No. 5, sent for Tarapershad\* Chund alias Ramoo Chund alias Ramlochun Roy for the ostensible purpose of prescribing for and treating his wife, but really to circumvent the death of the aforesaid Binoderam. This man (prisoner No. 6,) presenting himself under a false name, Premnarrain, proposed to prescribe for the deceased. The latter aware that he had come from the house of prisoner No. 5, at first hesitated to trust him; he was, however, a sufferer from syphilis; this and a desire to restore his virility seems to have removed his scruples, and the night before his death he took a pill from the prisoner No. 6. He was shortly after seized with a violent fit of vomiting and purging which continued with more or less virulence until

† Prosecutrix.  
Witness No. 1,

the following afternoon when he died.†

Immediately after the deceased was attacked, the *soi-disant* Kubeeraj was sought for, but could not be found, many of the neighbours were also sent for or came‡ and saw the state he was in. A Kubeeraj Babooram Mundul, witness No. 16, was called in, but could administer no effectual relief. He states on oath his belief that arsenic

‡ Witness No 14.  
" " 15.  
" " 17.  
" " 18.

had probably been administered, previous to his death, however the deceased made Kooernarain Paharee§ write down his declaration, to be submitted to the police, that the prisoners had

§ Witness No. 17.  
caused his death as stated above, and signed it. The *post mortem* examination was conducted by witness No. 19, Luchmeenarain Doss, the native doctor of the Nugoowa hospital and from his evidence no doubt remains on my mind that the death of the deceased was caused by the administration of arsenic; the symptoms described by him are similar to the effects which that poison is said to produce.

Immediate search, as I have stated above, was made for prisoner No. 6, but he had fled from the village and was not arrested until about a month afterwards.

The administration of the noxious pill is sworn to by the wife of the deceased and two witnesses.|| A petition presented to the Deputy Magistrate by

|| Witness No. 1.  
" " 2.

prosecutrix, who was dissatisfied with the darogah's proceedings, gave the first clue whereby the king's evidence, Anundeeram Roy, witness No. 10, and that of two other servants of the prisoner Ramakanto Paudah No. 5, was obtained.

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These three men prove that prisoner No. 5, on the night of the 10th Poos, gave to prisoner No. 6, a poisonous powder supposed to contain arsenic and *mera shingha*, a root possibly of the plant called Monk's Hood, and induced him by the hope of a reward of 50 Rs. to administer it to the deceased.

Prisoner No. 6, distinctly confessed his guilt before the Deputy Magistrate of Nugooowa and his confession is proved by the attesting witnesses to have been voluntary.

Both prisoners have attempted in this Court to prove an "*alibi*," but their defence has completely broken down. One of the witnesses for the defence,\* a cousin of prisoner No. 6,

Wit. No. 25, Kashee Chand. swears that the chapprassy maltreated him after his arrest,

but his evidence is not trustworthy, and had the alleged torture been inflicted, marks of it would have been easily detected by the Deputy Magistrate.

There is not the slightest ground for doubting the evidence for the prosecution. The *futwa* of the law officer finds the prisoners guilty of the murder of Binoderam Nund, but bars "*kissas*" and declares them liable to *seesut*. I concur in the conviction. Both the prisoners are, in my opinion, proved to be principals in the first degree of this premeditated and cold-blooded murder. I can see nothing in extenuation of their guilt and recommend that they be sentenced to suffer death.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It is clearly shewn that the deceased has had enmity and lawsuits with prisoner No. 5; and that all obstacles to this prisoner succeeding to certain ancestral property would be removed, if deceased died without children. It is also clearly shewn by the evidence of witnesses Nos. 10, 12 and 13, the first the brother-in-law, and the other two confidential servants of prisoner No. 5, that the removal of deceased by poison had been contemplated. It is further proved by that evidence that prisoner No. 6, was sent for and induced to come and undertake the task, and that he mixed poison received from prisoner No. 5, and took it to administer to deceased as medicine for gonorrhoea, as to which deceased had consulted him, prisoner No. 6. It is moreover proved by the prosecutrix, the wife of the deceased, and by the witnesses Nos. 1 and 2, residents in deceased's house, that prisoner No. 6, did administer a pill, shortly after taking which, the deceased was taken with all the symptoms of having been poisoned. The confession of prisoner No. 6, before the Deputy Magistrate shews that he did this at the instigation of prisoner No. 5, and the facts which prisoner No. 6, mentions there, are strongly corroborated by the entire evidence, as well by that of the person admitted as Queen's evidence, witness No. 10, and of Nos. 12 and 13, as also by that of those in deceased's house, viz. his wife, his sis-

ter-in-law, witness No. 1, and servant, witness No. 2. The whole chain is completed by the evidence of the witness No. 17, who drew up a petition for the dying man, in which the latter charged prisoners Nos. 5 and 6, and by that of the native doctor shewing poison to have been the cause of death.

The Counsel for the prisoner No. 5, Baboo Jugdanund Moorjee, has urged that the evidence of No. 10, Anundee, should not be accepted, as he contradicts himself before the Sessions Judge as to what he stated to the Magistrate; that is, he does not state to the Magistrate that he knew Tarapershad before. Further, that it is most strange and incredible how Anundee could hit upon the man he wanted, prisoner No. 6, on the road, not knowing him before; and that the prosecutrix denies before the Sessions Judge, her statement to the police and Magistrate as to her having consulted the prisoner No. 6, for her own barrenness.

We observe that the real evidence of No. 10 on oath is that which he gives to the Sessions Judge. He says he had "*alap*" with prisoner No. 6. This implies that he knew him. His statement before the Magistrate was not on oath, nor is it clear from it that he did not know prisoner No. 6. The prosecutrix does deny consulting him herself, before the Sessions Judge; but as that is quite independent of the proof against prisoners No. 5 and No. 6, we do not think it essentially affects the credibility of her evidence against the prisoners as to this charge.

The prisoner's *alibis* are in no way proved, though they had every opportunity to prove them, especially in the case of prisoner No. 6.

We see no extenuating circumstances in the case, and sentence both prisoners capitally.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

MOYZOODDEEN SHEIKH.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer.—Mr. J. R. Ward, Commissioner for the suppression of dacoity, at Hooghly.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Hooghly, on the 10th June, 1857.

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Hooghly.

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Case of  
MOYZOODDEEN  
SHEIKH.

Prisoner convicted. Remarks on certificate relative to confessions.

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SHEIKH.

*Remarks by the Additional Sessions Judge.*—The prisoner confessed to fifteen dacoities before the Dacoity Commissioner, he confesses before this Court to having been implicated in fourteen or fifteen dacoities and names ten of them, referring to his detailed confession for further particulars.

That the prisoner confessed voluntarily before the Dacoity Commissioner is proved by the attesting witnesses.

Witness No. 1, denounces the prisoner as having been engaged with him in two dacoities, viz. the Mashdanga and Bishorambhur dacoities.

Witness No. 2, denounces the prisoner as having been engaged with him in six dacoities, viz. Mashdanga, Bishorambhur, Goranus, Mustool, Luckoor, Hurroodanga and Hurreenugger dacoities.

*Nuthees* of these dacoities, which are mentioned by the prisoner, have been found, which establish the fact that they had actually occurred. The Dacoity Commissioner states that he has traced four of the dacoities to have been concealed, and it would appear he has not completed his search after the remaining eight.

I have no reason to doubt either the truth of the prisoner's confession or his guilt, and therefore convict him of having belonged to a gang of dacoits and recommend him to be sentenced to transportation beyond sea for life with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We observe the Commissioner records as follows. "He (prisoner) was apprehended on the 8th and arrived here on the 9th, in the evening, when he immediately confessed to having been a professional dacoit. His confession was recorded the next morning."

"I certify that on arrival at this office, prisoner was kept under separate guard in my own house and that he could not have had any communication whatever with any one before he confessed."

Under these circumstances, and otherwise, we see no reason to distrust the prisoner's confessions.

The Bishorambhur dacoity is shewn to have really occurred, (V. p. 685 of Nizamut Adawlut Reports, April, 1856,) and the prisoner's share in that is clearly proved by Sreemunth, witness No. 2, and indirectly by witness No. 1. The prisoner's confession tallies with the statements of the approver witness No. 2.

We convict the prisoner under Act XXIV. of 1843, and sentence him under that Act, to be transported for life.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND BHATOO ALIAS GUDADHUR SING

*versus*

JUGOBUNDHOO GHOSE MUNDLE.

Beerbhoom.

CRIME CHARGED.—Murder of Goodree *alias* Gooroodial Sing-Committing Officer.—Mr. R. J. Wigram, Officiating Magistrate of Beerbhoom.

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Tried before Mr. O. W. Malet, Sessions Judge of Beerbhoom, on the 22nd May, 1857.

Case of  
JUGOBUN-  
DHOO GHOSE.

*Remarks by the Sessions Judge.*—On the 9th Aughan, 23rd

Witness No. 6.

November, 1856, defendant and deceased were sent with 184 Rs. from Kotasoorh to Burdwan, at night they halted at Amduhra and lodged in the house of one Sham Moira. The next morn-

Prisoner re-  
leased, there  
being insuffi-  
cient proof;  
though strong  
suspensions of  
guilt.

Witnesses Nos. 8, 9 and 10.

ing before daylight defendant called up the deceased to pursue their journey; some objections were made by him, but eventually they

Witness No. 11.

started together, as one witness says, with a third person. The deceased was not again seen alive.

The same morning his body was found at a short distance dis-

Witnesses Nos. 1, 2, 3 and 4.

figured by sword-cuts and thrusts. The usual enquiries were made and the body was sent in to the station, where it was examined and the medical evidence shows that

Witness No. 5.

the wounds were the cause of death.

In the meantime the defendant not giving notice at the police pharee, at Amduhra, (though very near,) returned to

Witnesses Nos. 6 and 12.

Kotasoorh, where he did not arrive till night, though only six or eight *coss* distance. He said that he and deceased having slept under a tree, had in the morning been attacked by robbers, who were ill-treating the deceased, when defendant made his escape after throwing away the bag of rupees, which was in his charge.

This story was believed, and on the 25th November, the gomashtha who had given the rupees, the defendant and others proceeded to Burdwan, but without giving any intelligence to the police; at Burdwan, the de-

Witness No. 13.

fendant varied in his account and said that the deceased had been killed by the robbers. He was obliged to make a petition to the Magistrate, who referred the

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case to this district. Some suspicion fell on defendant, and witness No. 13, a man in authority directed him to be taken to the thannah.

Defendant and Sham Moira (since dead) were then arrested. Before the Magistrate the defendant gave a third version of his story, stating that they had slept under a tree in the market-place at Amdahra, but adhering to his story of the attack 'by robbers.

Before me defendant denied the murder, but again varied a fourth time in his story. He allowed that he and deceased were entrusted with the money, that they slept at the house of Sham Moira and left it together, but said that at starting deceased took the purse and the papers. He persisted in the story of the attack and his own flight, but could give no sufficient reason for his not calling for assistance or not giving information, nor for his being so long on his journey home; nor could he explain other unimportant particulars. He seems to have previously borne a good character.

It is proved by the evidence in the case, 1st that defendant and deceased had a sum of money entrusted to them, 2nd, that they travelled in company, 3rd, that they slept at the same house in company, 4th, that they left this house in company, 5th, that the deceased was murdered, 6th, that the money is missing.

Adding to this, 1st the entire want of corroboration of defendant's story of the attack of robbers, 2nd, his neglecting to inform the police or call for assistance, 3rd, the variation in his account of his actions, 4th, the unaccountable delay in his journey from Amdahra to Kotasoorh, there can be but one inference that defendant, and no other, was the murderer.

The jury with whom I tried this case, found the man guilty of being accessory to the murder. I consider that even if not the actual murderer, that there is sufficient presumption that he was a consenting party, and therefore guilty of murder, but as there is no actual evidence and there is a bare possibility of a mistake, I do not recommend the last penalty of the law, but that he be imprisoned for life in irons with hard labor.

The conduct of the police calls for no remark, but I have to request that the Magistrate will inform witness No. 13, Gobordhun Banerjia by "*nekname*" *perwannah* that his services in this case have been highly appreciated by the authorities. I would also call his notice to the conduct of witness No. 6, in neglecting to give any intelligence to the police.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner and deceased were sent in charge of some money (184 Rs.) to be paid as rent to the Raja of Burdwan. The money was in the hands of the prisoner. The deceased was last seen alone with prisoner. The deceased

had a *lattee* and sword, prisoner a *lattee*. The cause of the death of the deceased, as deposed to by the Civil Surgeon, was a wound, cutting the vessels and nerves of the neck, and the spinal column. The corpse of the deceased was found outside the village of Amduhra.

The prisoner's defence is that he and deceased spent the night at Amduhra; that they started before dawn; and at a bridge, a little distance from the village, were attacked by robbers; that prisoner dropped the money, ran off, and went back to the residence of his master six or eight *coss*, where he arrived that evening. He varies in his story as to whether he and deceased slept under a tree, or at Sham Moira's, at Amduhra. The statement of Sham Moira and the evidence of the witnesses Nos. 8, 9, 10 and 11, is that prisoner and deceased did sleep at Sham Moira's, though there is some discrepancy in that evidence as to whether there were prisoner and deceased only, or a third person also with prisoner and deceased. Prisoner throughout states that he did not inform the police, or any one, from morning till evening, when he returned to his master's, nor did he then mention deceased's death.

The case has no other matter of evidence in it, direct or circumstantial, and depends entirely on the amount of violent presumption to be found in the above facts.

On the one hand, the prisoner's story of the robbery is not corroborated in any way; he never told any police of it or others, though both were at hand; he did not return the six or eight *coss* to his master's residence till evening; he did not *then* specifically state that the deceased had been killed, which he appears to have done next day; he mentions the robbers attacked with *lattees*, while deceased died of an *incised* wound; he contradicts himself, and is contradicted by witnesses Nos. 8, 9, 10 and 11, as to where he spent the night; the deceased is stated to have been a weaker man than the prisoner, and prisoner seems to have urged deceased to travel before it was well light.

On the other hand, the money was with prisoner, and he could have taken it (if that was his object) without any violence; he had no enmity with deceased; the witnesses, who depose to where the prisoner passed the previous night, depose to no quarrel then or there; and there is nothing to contradict the prisoner's story of the robbers, though there is nothing to support it.

We do not think the presumption violent enough to justify a conviction, and order the release of the prisoner.

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## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Sylhet.

AJUDEAPERSAD MISSER.

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SAD MISSER.

Prisoner re-  
leased. Re-  
marks on con-  
tradictions  
and inconsis-  
tencies in the  
evidence for  
the prosecu-  
tion.

CRIME CHARGED.—1st count, forgery and causing to be forged a mortgage deed of land, dated 6th Kartick, 1263, B. S. ; 2nd count, knowingly having in possession the same forged document ; 3rd count, knowingly uttering before the Punchayet the said forged document, stating it to be a true one.

CRIME ESTABLISHED.—Causing to be forged a deed of mortgage.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Sylhet.

Tried before Mr. M. Shawe, Officiating Sessions Judge of Sylhet, on the 9th April, 1857.

*Remarks by the Officiating Sessions Judge.*—The following are the particulars of this case of forgery. The prosecutor states, that his maternal uncle, deceased, to whose estate the prosecutor and his brother succeeded, was the owner of a parcel of land in *Bunderbazar*, where the prisoner had his shop, the prosecutor gave the prisoner a *deelashapatta* and two *dakhillas* for the rent of the ground ; that in order to liquidate certain debts incurred for the funeral expenses of his deceased uncle, the prosecutor, on the 17th of Kartick, 1263, sold the piece of land to one Brijolall Bajpye (witness No. 17,) a shop-keeper ; Pro-cashchunder Doss, witness No. 19, gomashita, went to the prisoner, and demanded a *kuboolcut* for the ground occupied by him ; to this the prisoner objected ; and urged that the prosecutor had borrowed from him (the prisoner) Rs. 80, and executed a bond and pledged the ground as security for the loan, the prosecutor being afterwards informed of the prisoner's assertions, went to Sheebpersad Dobey's (witness No. 8's) shop, and the prisoner produced the bond, which was then suspected as being forged, the prosecutor's signature attached thereto and being in his own hand-writing. The prosecutor lodged a complaint at the thannah, and the bond was produced before the darogah, and the prisoner, on being asked by the darogah, stated that he had on the 5th or 6th Kartick last, purchased from one Thakoor Dhun (witness No. 11,) a stamp paper valued at one Rupee ; that he gave the paper to the prosecutor, and went to perform his daily *poojah* ; that he was ignorant as to by whom the bond had been written ; that Ramdhun Deb and Juggermath Singh

a collectorate peon who were sitting in his (prisoner's) house, were witnesses to the bond, but whether their names were written in their own hand-writing or by any other person, the prisoner is unable to say; and finally, that the prisoner paid to the prosecutor Rs. 80, in the presence of the aforesaid two witnesses. The prisoner in his reply before the police states, that the prosecutor on the 6th Kartick last, handed the bond over to him (the prisoner,) and received from him Rs. 80, as a loan, in the presence of Juggernath Singh *peada* and Ramdhun Deb witnesses; that the transaction was witnessed by no one, except the two witnesses, the prosecutor and the prisoner himself; that the prisoner was ignorant who wrote the draft of the bond; he cannot say when and by whom the original bond, the names of the subscribing witnesses, or the prosecutor's signature were written; that the prosecutor only read the contents of the bond to him and he (the prisoner) lent him the money; that he (the prisoner) produced the bond in the presence of witnesses Nos. 8 and 9, and the prosecutor denied the genuineness of the document; that the stamp valued at one Rupee was purchased by him from a *pysawallah* and finally that the prisoner was unaware of the deed being forged or otherwise. The prisoner before the Magistrate denies the forgery; he states that the prosecutor on the 6th of Kartick last, came to his (prisoner's) shop and took from him a stamp paper of the value of 1 Rupee; that he the prosecutor with one Ramdhun and Juggernath Singh a collectorate peon, when sitting in his (prisoner's) house proposed to borrow from him Rs. 80 on a bond; that the matter was arranged between them, when he, the prisoner, went to bathe and on his return he found that the prosecutor had drawn up a bond to the effect that he, prisoner, should lend him Rs. 80 and could hold the parcel of land in which his (the prisoner's) shop is situated as security for the loan; that he, the prisoner, paid Rs. 80 to the prosecutor and received the bond; the prisoner also adds that a clause was inserted in the bond to the effect that the money was payable after the lapse of three months and in case of default, the prosecutor should forfeit the parcel of land on which his (the prisoner's) shop stands; and the prisoner asserts he was not aware by whom the bond had been written. Ramdhun Dutt witness No. 6, who was pointed out by the prisoner himself to the police as being the subscribing witness to the alleged bond, deposed that he was not a witness to the bond, but previous to the institution of this case, the prisoner went on two occasions on different days to him, and intimated to him that his evidence would be required in a case on his (the prisoner's) behalf; Juggun Singh, witness No. 7, said to be another witness to the bond, denies all knowledge of the transaction, and states, that he was absent in the mofussil on the 13th or 14th of Assin and did not return to the Sudder Station

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until the 4th of Augran. Sheebpershad Dobey, witness No. 8, corroborates the prosecutor's story and states that the bond was shewn to him by the prisoner and which (bond) the prosecutor denied having been executed by him; that the bond was afterwards shewn to the police darogah; that the *khattabye* found by the police in the prisoner's house in which it is noted that the prosecutor had received Rs. 80, was not drawn up according to the usual custom practised by *mahajans*, as one of the pages of the *khattabye* commenced for the year 1263 B. S. and the year 1262 B. S. was inserted afterwards; that the date, 9th of Kartick, was changed into the 6th idem; and again in another item, in the same *khattabye*, the amount appeared to have been credited to the prosecutor on the 6th of Kartick. Luchmunpershad (witness No. 9,) states, that on the 20th Kartick, Procashchunder Doss, Brijolal Bojpie's goinashita, and the prisoner came to his (witness's) house; that the latter produced two *dakhillas*, one *deelashapottah* and a bond engrossed upon stamp paper, which he requested him to inspect; that the said Procashchunder compared the *dakhillas* with the *deelashapottah*, but they did not correspond; that Procashchunder Doss called upon the prosecutor, who came and inspected the *bunduknamah* and pronounced it forged; that papers were taken to the police darogah. The witness was also present when a draft of the forged document and a *khattabye* were discovered in the prisoner's house by the police. Mahomed Ruffee chowkeedar (witness No. 10,) deposes to having purchased a sheet of stamp paper of the value of one Rupee and to having borrowed from one Thakoor Dhun 8 annas, depositing with him the stamp paper as security for the loan. Thakoordhun Doss (witness No. 11,) states that in the month of Srabun, Ruffee chowkeedar (witness No. 10,) pledged as security a sheet of stamp paper of the value of one Rupee and borrowed from him (witness No. 11,) 8 annas; that in the middle of Kartick last, he (the witness) disposed of the paper to the prisoner, who purchased it for one Rupee one anna, but why, the witness cannot say; witness also deposes that he heard the prisoner had forged a document; the witness identified the stamp paper as having been the same paper which was sold by him to the prisoner. Moonoollah (witness No. 12) states that on the 17th or 18th of Kartick the prisoner went to Abbas Ally, a pleader, and requested him to draw out a *bunduknamah*; that the said Abbas Ally dictated the words to be inserted in the bond and which he (the witness) wrote; witness identified the draft produced before the Court as having been written by him; he further deposes that there were no such signatures scribbled at the bottom of the draft as there are now, i. e. Juggernath Doss, the prosecutor's name four times written and erased. Syud Abbas Ally (witness No. 13) deposes that on the 17th or 18th Kartick, the pri-

soner went to him, and requested him to draft a bond to the effect, that the prisoner would lend the prosecutor money and the former should hold possession of the piece of land occupied by him (the prisoner) as security for the loan (that in case the money was not paid within the time specified in the bond the property should be liable to sale;) that the witness after several excuses complied with the prisoner's request and as he, witness No. 13, dictated, one Amoonoolah (witness No. 12,) wrote the draft. Seetaram Puttuk (witness No. 14,) states that one day in the month of Kartick, forgets the date, he went to the house of Abbas Ally (witness No. 13,) his pleader, in order to instruct to proceed with the execution of a decree in favor of one Rughoonath Ostee; that the prisoner accompanied him to the pleader's and took from him the draft of a bond, but what the contents of the bond were, witness is unable to say. Kirtynarain Kurr (witness No. 15) deposes that he was present when the police darogah searched the prisoner's house, and procured the draft of a bond and a *khattabye*; he identified the draft and the *khattabye*. Neelkishore Doss (witness No. 16) deposes that in latter part of the month of Kartick he went to the Parcool thannah where the darogah showed him a *bundakputtro* and asked him whose hand-writing it was in; he recognised it as the hand-writing of one Bungo Chundro, late a darogah in the Abcarry Department. The bond appeared to him to be forged because the prosecutor's signature attached thereto was not his, he being on the 6th of Kartick (the date of the bond) engaged in the performance of his maternal uncle's funeral rites, and which the witness himself also attended; Brijolla Bajpye (witness No. 17) states that on the 17th day of the month of Kartick last, he purchased from his co-sharers for Rs. 250 a *pottah* of ground, at present occupied by the prisoner's shop; that on the night of that date, he, the witness, demanded a *kubooleut* from the prisoner, who replied that the prosecutor had executed a *geerbeenamah* and borrowed from him (the prisoner) Rs. 80; the land in question being given in security for the loan; that at the request of the witness, the prisoner showed him the *geerbeenamah*, which was an unregistered document and the matter was brought to the notice of the police. Door-gahchurn Surmah (witness No. 18) deposes to having attended the ceremony on the occasion of the funeral of the prosecutor's uncle on the 6th of Kartick, and to having observed that the prosecutor was engaged in the ceremony from morning to night. The prisoner in his defence before this Court states, that the witnesses brought forward by the police (as being the subscribing witnesses to the bond) were not his witnesses, but that Juggernath Sing, a collectorate peon, who resides at Noashoruk and Ramdhun Deb, a resident of Bunderbazar in this station, were the real subscribing witnesses to the alleged bond, and

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that the witnesses in his defence mentioned in the Calendar will depose to the fact that he, the prisoner, paid to Juggernath Doss, the prosecutor, Rs. 80, and lastly, that the case could not, according to the Regulations in force, be preferred at the thannah, the prisoner also urges, that he is not acquainted with the vernacular language, and that he committed no forgery. Rughoonath Ostee, the witness, cited by the prisoner, in his defence stated, that he knew of nothing to depose to in the prisoner's favor and that he was ignorant of the fact as to whether the prisoner paid Rs. 80 to the prosecutor or not. The witnesses cited for the defence and sent by the Magistrate of Bhagulpore, viz. Poromeshardin Ostee, No. 20 and Kirtyram Goala, No. 21, both depose that they are acquainted with the prosecutor and the prisoner, but are in no way connected with either; that they can state nothing in the prisoner's defence and are not acquainted with the circumstance of the prisoner having given Rs. 80 to Juggernath Doss, the prosecutor; neither do they know whether the amount was or was not paid. The assessors in their verdict convict the prisoner of causing a forged deed to be prepared, in which verdict I concur, and sentence him as noted below.

*Sentence passed by the lower Court.*—Imprisonment without irons for three years, and to pay a fine of fifty Rupees, or in default of payment to labor until the fine be paid or the term of his sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.)

*Mr. G. Loch.*—I concur generally in the remarks made by my colleague. I have separately to record the following remarks. The mortgage bond of 6th Kartick, is alleged to have been forged. The prosecutor Juggernath, denies having received a loan from the prisoner and declares his signature on the bond to be a forgery; he having on the 6th Kartick been engaged in performing funeral ceremonies, and unable to leave his house. On the 7th Kartick, Juggernath sold the property to Brijolall Bajpye, and the purchaser on the *same evening* demanded a *kaboolcut* from the prisoner, who met his demand by saying that the prosecutor had already mortgaged the property to him for a loan of Rs. 80. On reference to the prosecutor two or three days after by the purchaser's gomastah in the shop of the witness, No. 8, prosecutor declared the mortgaged bond to be a forgery, and took the papers to the thannah, being followed by the prisoner, who still declared the bond to be a *bond fide* document. The evidence against the prisoner consists therefore of the prosecutor's denial of the loan and of his signature to the mortgage bond; the denial of the witnesses to the bond, in whose presence the prisoner declares that he paid the money; the accounts of

the prisoner which shew, it is alleged, an entry of 1262, after those of 1263; and an alteration of date, viz. of one item of 9th Kartick, into 6th idem, in order to preserve the due sequence of transactions, the alleged loan of Rs. 80 to the prosecutor being entered on the 6th Kartick subsequent to a previous entry on the 9th. Further, a draft of the mortgage bond, was found in the prisoner's house bearing at foot the name of the prosecutor written four times and scratched out, and which is identified by the witness, Aman Ollah, to have been written by him on 18th Kartick, (with the exception of the erased names at foot,) by direction of the witness, Abbas Ally, vakeel, to whom the prisoner had on that day applied for a draft of a mortgage bond. The prisoner also makes contradictory statements in his defence. To the police he says that the prosecutor, Juggernath, brought the rough draft of the mortgage bond, and while he, prisoner, went to bathe, had it engrossed on stamp paper supplied by the prisoner. On his return from bathing he found the bond prepared and signed by the prosecutor and witnesses in whose presence he paid the money. To the Magistrate, he admits that he applied to Abbas Ally, vakeel, for a draft of a mortgage bond on the morning of 6th Kartick, and Aman Ollah, by the vakeel's direction, wrote the one found in the prisoner's house and produced in Court; and that he gave it to the prosecutor on the morning of the 6th, when he came to the prisoner's house for the money. The prosecutor took it, and while prisoner had gone to bathe, had it engrossed on the stamp paper, but by whom, he cannot say; that on his return, the prosecutor signed the bond, and he paid the money in the presence of the attesting witnesses. The prisoner's defence on trial is a simple denial, and he adds, that the witnesses Nos. 1 and 2, examined by the Magistrate were not the real witnesses to the bond. The witnesses called by the prisoner prove nothing in his favor.

There *seems* nothing wanting in this evidence to bring home the charge of knowingly uttering a forged deed to the prisoner; yet I cannot but think that the prisoner is *not guilty*. The circumstances, under which the alleged forgery had been committed appear to me so improbable as to warrant a grave suspicion as to the credibility of some of the witnesses. The prosecutor's signature on the mortgage bond differs but little from that on the *dullasa pottah*, dated 5th Assar, 1261, and receipts; and appears, as far as one can judge by the letters, to be written by the same hand. The admitted signature of the prosecutor to his deposition taken before the Magistrate and at the Sessions trial, differs as much from that on the *pottah* and receipts, as does the signature on the mortgage bond. It is not likely that there should be evidence to the negotiation for a loan, and, if the witnesses to the bond repudiate their knowledge of the transaction, no collateral proof besides the prisoner's accounts

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1857. are forthcoming. These accounts, it is alleged, are incorrect, and prepared with a design to meet the present circumstances. But on reference to the *khatta bahi*, I find that the accounts for 1261 and 1262, and up to the month of Assar, 1263, are all correctly drawn up. Then comes the account for Kartick, which is headed 1262. This is evidently a mistake, for it could serve no purpose of the prisoner, who declares his mortgage bond to be written on 6th Kartick, 1263, to enter this item in the transactions of Kartick, 1262, or to enter the transactions of Kartick, 1262, subsequent to those of 1263. Nothing could have been easier had the prisoner intended to deceive by his accounts than to have substituted a page in the proper place in Kartick, 1262. The alteration of 9th to 6th Kartick, is very questionable.

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Further, it appears very unlikely that a person who would commit such a forgery, knowing that the document must be attested by the subscribing witnesses, should not have secured their co-operation beforehand, and been prepared to meet any denial on the part of the owner of the property. It is stated that the prosecutor succeeded to the property on the death of his uncle which occurred on 2nd Kartick, and that he sold it in order to meet the expenses of the funeral rites. It seems very improbable that if the parties had no transactions with each other beyond that of landlord and tenant, the prisoner should, in so short a time after prosecutor had succeeded to the property, resolve upon and carry out this design of forgery and fraud. And it may here be observed that while the prosecutor deposes to have succeeded to the property only in Kartick last, his *dullasa pottah* in which he claims the property as hereditary is dated Assar 1261; and that whereas he claims to hold it as one of four brothers, he appears to have sold it without reference to the rights of the other parties. Moreover, it does not satisfactorily appear from the police proceedings how the part taken by the witnesses, Amanoollah and Abbasally, was discovered; for the prisoner states to the darogah that the prosecutor brought the draft of the mortgage bond; nor have we any means of estimating the character of these witnesses, and the credit to be allowed to their testimony. The signatures at the foot of the draft which have been scratched out appear to be in the same hand-writing as the body of the draft. The prisoner, from what may be gathered from the record, appears incapable of carrying out so bold a fraud as that with which he is charged. He is a resident of Lucknow; and is probably the victim of a trick not unfrequently practised in Bengal by parties in want of money, who borrow money on a mortgage of property and subsequently sell that property to another party; and suspicion not unreasonably attaches to the prosecutor, when what has been stated in regard to the date of the *pottah* and the circum-

stances of the sale to Brijolall are considered. I concur in the acquittal of the prisoner.

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*Mr. H. V. Bayley*—The facts of the case, as far as they can be discovered from the evidence, and pleadings, and the not very complete investigation in the zillah Court, are these. Prosecutor was the landlord of prisoner, who is a native of Lucknow and rented a shop. Prosecutor received rents in advance from the prisoner; and gave him a *dillasha pottro and two receipts, the signatures in which are admitted to be prosecutor's*. On the 7th of Kartick, witness No. 17, Brijal Bajpye, went to prisoner's, and stated that he had purchased the shop from prosecutor, and demanded a *kubooleut* from prisoner. The prisoner objected, and claimed on a deed of mortgage to himself from prosecutor dated 6th of Kartick, 1263; purporting to be given for a consideration of 80 Rs. The prosecutor was subsequently referred to; and the parties, i. e. the gomastah of the purchaser, the prisoner, and the prosecutor went to the shop of Sheebpershad, witness No. 8. There, prisoner repeated his claim on the deed of mortgage, and produced it; and prosecutor denied having ever given it, and called it a forgery. The witness No. 8 desired them not to make his shop the scene of their recriminations, but to go to the thannah. The prosecutor took up the alleged mortgage deed and other papers, and went to the thannah, followed thither by the prisoner. The prosecutor still insisted it was a forgery. The prisoner's shop was searched; a draft of the deed of mortgage found; and the prosecution proceeded. The subscribing witnesses to the deed utterly deny having subscribed or attested the deed, or seen the payment of money. Other witnesses depose that on the date on which the bond was executed, the prosecutor was all day in his own house, engaged in a funeral ceremony. The prisoner's account-books are alleged to have the entry of this transaction, as of 1262, inserted after those of 1263; and a previous entry of the 9th of Kartick changed into the 6th. The Sessions Judge convicts the prisoner *on full legal proof of causing the forgery of the deed*.

The prisoner appeals; urging, (1) that his witnesses to the deed and to the payments of the money were tampered with, while he was in *hajut*, and unable to attend to his case; (2) that the Parcool darogah and prosecutor's party have colluded; (3) that the prosecutor owned before respectable people in the following *Pous* that he had really given the deed repudiated by him as a forgery; and (4) that the Sessions Judge did not call the prisoner's witnesses.

After a very careful consideration of all the papers, I think this is a case in which the credibility of the evidence of the witnesses for the prosecution should be fully tested by the pro-



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For the prosecution, *Nagree account-books* of the prisoner, are produced. They were seized by the police. I do not find in them a fraudulent insertion of this transaction as one of 1262, and improperly inserted before the accounts of 1263. The accounts shew in regular succession debits and credits for 1261, 1262 and 1263. The 80 Rs. are alleged by prisoner to have been paid to prosecutor on 6th Kartick, 1263. It is quite possible that 1262 at the top of the page may have been entered for 1263 by error, for all the entries in that page are made under that year, whereas it is obvious that they relate to 1263. It could serve no purpose of the prosecutor to make the year of the transaction 1262, when he claims on a mortgage bond of Kartick, 1263, nor does the date of the 9th appear to me altered into the 6th. Some witnesses it is true, say the books are not kept, as exactly as *mahajinee* books should be; but *as to the charge* I do not consider the case for the prosecution made out by these books. I have tested other pages taken at random, viz. marked B. and C. and the result confirms my views above stated; for they shew no irregularities or variations. Further, the book shews the accounts of 1263 kept regularly month by month, to Assin.

We have next to consider the *draft of the alleged forged deed*. Much stress is laid on the four-times-repeated scratching out with pen and ink, at the foot of the deed, of the name of Juggernath, the prosecutor, in it. Now a careful examination of that part of the paper convinces me that the same hand that wrote the whole draft wrote the name Juggernath in those four places; and the writer of the draft was undoubtedly the witness Amanoolah. Moreover if it is intended to be inferred from the circumstance adverted to, that the name was written with a view to copy it in a forged but exact way, on to the fair mortgage deed, the *existing entry of that name* in the body of the draft deed would have served for that purpose. Further, if it is intended to be inferred that a blank form was designed to be filled up with a forged name, the draft shews that it was not, for it is filled up from the first; nor indeed does the evidence of the writer shew that prisoner applied to the vakeel Gholam Abbas for such blank form, nor that he, the writer, wrote such blank form.

To proceed to the *handwriting of the signature on the alleged forged bond*, and that admitted to be prosecutor's on the *duilasa pottah*, and on the receipts, I find on examination with a glass, not only that they bear each to the other a strong general characteristic resemblance, even though somewhat different at first sight to the naked eye; but that the *denied* signature on the bond does *not* differ so much from the *admitted* signature on the

*dullasa pottah* and two receipts, as the prosecutor's admitted signature on his deposition does from the admitted signatures on the *dullasa pottah*, and receipts.

In regard to *other probabilities*, it is clear that the prosecutor wanted money; that he got his rents in advance; that he sold his shop; that the very day of the purchase from prosecutor, the purchaser made his application for a *kuboolcut*; and that *very day*, prisoner met the demand with his claim of mortgage. There is nothing to shew how prisoner could have had such foreknowledge of the sale as to be prepared with a forged mortgage against it *on the very day* of that sale being made.

In respect to the *evidence on which the prisoner has been convicted*, the Sessions Judge says: "Prokashunder Doss, witness No. 19, gomashita went to the prisoner and demanded a *kaboolcut*." Now I find no such witness No. 19, in the Calendar, nor his depositions before the Magistrate or Sessions Judge on the record. There is his statement to the police without oath. He there states that the purchase by his principal was on the 17th of Kartick, Saturday; and that on that day, he, witness, went to demand the *kuboolcut* from the prisoner, and was met by prisoner stating that prosecutor owed him 100 Rs.; further, that the purchaser sent this witness again a day or two subsequently to see how far the prisoner's statement was correct. The evidence of the purchaser himself does not specify this *double visit* of this gomashita. Be that as it may, we have the purchase, the demand for the *kuboolcut* by purchaser and gomashita, the prisoner being prepared with a forged deed of mortgage, all events of one and the same day.

Throughout the transactions, prisoner appears to me to have acted openly. He meets the purchaser's claim at once; he refers to his neighbours, confronting the prosecutor there; and he goes to the thannah with the prosecutor. It is true there are contradictions in his defences before the police and the Magistrate, and his witnesses do not support his defence. But no one is to be convicted on the weakness of his defence, but on the strength of the evidence for the prosecution. Further, it is clear on the record that the prisoner did not understand Bengalee in which his defence was very improperly taken by the Police and the Magistrate; and he appears of a credulous disposition; for instance, it is most unlikely that if the prisoner was really cunning and acute enough to undertake and carry out a forgery, he would have shown entirely the opposite character in the tenor of his defence, and in his proceedings from the time he went to the vakeel Gholam Abbas, till he was put in *hajut*. Each and all these matters betoken the very reverse.

Nor is the case one where no other reasonable conclusion can be come to than that prisoner is guilty. He says that prosecutor brought him the deed, signed and attested, but that only two

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witnesses saw the money paid. These two witnesses deny this fact, but if they have been bought over, the rest of the prisoner's tale on this matter is borne out by the resemblance of the prosecutor's alleged signature before referred to, those admitted by him; and by the very silence of the attesting witnesses. If too the prosecutor brought the deed, it is quite possible he may have done so from his home, and pre-arranged to do so on the day of a funeral ceremony in order to shelter himself in his repudiation of it, under that species of *alibi*.

Lastly, the prisoner is convicted of causing forgery *on full legal proof*. There is just as much full legal proof of his committing the forgery, as of causing it to be committed: that is, there is no full legal proof of either; although there may or may not be room for presumption of one or other or both. There remains the third count, of *uttering*, on which, as a minor offence, this Court could still convict him, if it were proved. The uttering can only, according to the record, consist of prisoner mentioning, according to the statement without oath of Prokaschundro to the police, that he (prisoner) had such a deed of mortgage, or of his producing it at Shibpershad's shop. The former is no uttering; the latter might be so construed, if the facts of the case removed the doubts, as to the matter of the deed being forged. But as I have above stated, I do not think the facts of the case at all satisfactorily prove the prisoner guilty either of causing forgery or of knowingly uttering a forged deed. I therefore would acquit him and would direct his immediate release.

The Magistrate is requested to have his remarks entered more legibly in the Calendar, and to use Calendars of a smaller size, which he could easily do by smaller writing and by a due regard to economy of space.

I observe that the illegality of the sentence as to labor has been corrected by the orders of the Resolution of the Judge in the English Department, dated 17th April.

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PRESENT :  
G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

BRAHMANONDO BORAL ALIAS DHYANONDO BORAL  
ALIAS DHYAN THAKOOR.

Hooghly.

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Case of

BRAHMA-  
NONDO BORAL  
alias DHYA-  
NONDO BORAL  
alias DHYAN  
THAKOOR.

CRIME CHARGED.—Dacoity in the house of Damoodurchunder Tantee, on the night of the 16th February, 1850, in village Julshora, thannah Ghuttah, zillah Hooghly.

Committing Officer.—Mr. J. R. Ward, Commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Hooghly, on the 15th April, 1857.

*Remarks by the Officiating Sessions Judge.*—The dacoity charged against the prisoner is fully detailed in the foot note of page 991 of the Sudder Nizamut Adawlut Reports for 1851.

I need not therefore recapitulate the circumstances here, I may, however, point out a material mistake, which occurs in lines three and four from the top of the above note namely, that it is Dhyanonondo Thakoor (the prisoner) and not Ghyanonondo Thakoor, who is afflicted with elephantiasis.

The prisoner pleads not guilty and rests his defence on non-identity.

It is not disputed that there was a Dhyanonondo or Dhyan Thakoor engaged in the dacoity, and it only remained for the prosecution to establish that the prisoner, whose real name is Brahmanondo Thakoor, is the Dhyan Thakoor of the dacoity. After a careful inquiry in which the prisoner had the advantage of an experienced vakeel, I have come to the conclusion, there can be no doubt of the fact.

Throughout the whole of the confessions made by persons,\*

\* Sodanudogopal Mookerjee, Haran Teylee and witnesses Nos. 1 and 2 in this case, who have been sentenced to imprisonment for life for this very dacoity, two *Poojari Brahmins* have been mentioned as

having taken a conspicuous part, in fact in having been the spies of the gang, they are not mentioned by name by all; but one is always distinguished as having elephantiasis (which the prisoner has) and it comes out clearly that Ghyan or Dhyan were the names they went by and that they were brothers. Ghyan has been apprehended and was sentenced† upon the

Prisoner convicted; pleas in appeal being overruled. Remarks, on Gopal Dulye's precedent N. A. Reports, Oct. 25th, 1852.

† Vide Sudder Nizamut Adawlut Reports, Vol. I of 1853, page 100. evidence of witnesses Nos. 1 and 2, in this case, and Haran Teylee, since dead, to imprisonment for life.

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The prisoner is now denounced by witnesses Nos. 1 and 2, who swear positively to his identity and their testimony is supported by what took place at the time, which I cannot describe better than in the words of the Dacoity Commissioner. "On information obtained through the 24-Pergunnah's police, Ramsoonder Byragee, whom the approvers implicate, was arrested, confessed page (139 of record 18) but he did not know the prisoners, who were *not* like him Calcutta men. On his confession Sodanondo was arrested, confessed to the police (page 160) and made a *quasi* confession in the foudary (page 176) accusing two *Poojari Brahmins*, whose names he did not know; *but one of whom had* elephantiasis of being the spies, and he was sent to point this man to the police (page 210). He took the darogah straight to Brahmanondo, whose house was searched; but no property being found he was put on security (page 211). Prisoner, it will be noticed, has a swelling of the left leg. Sodanondo was at the time acquitted by the Deputy Magistrate."

From the above, it is clear the prisoner, (Brahmanondo) was one of the *Poojari Brahmins* engaged in the dacoity, although at the time he was pointed out, there was not sufficient evidence against him, and as one of these *Poojari Brahmins*, Ghyan, has been transported for life, there can be no doubt that the prisoner must be the one that went by the name of Dhyan and who was remarked as having elephantiasis, thus clearly corroborating the testimony of witnesses Nos. 1 and 2. I, therefore, convict him of dacoity and sentence him to nine years' imprisonment in banishment, with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley). The Counsel for prisoner, Baboo Onocool Mookerjea pleads;

1stly. That as the Commissioner withdrew the second count, i. e. belonging to a gang of dacoits, there was a virtual acquittal, and that after being put on security in 1852, the prisoner was released.

2ndly. That the prisoner was tried under Act XXIV. of 1843: and as no systematically committing dacoity, as a profession, was proved, prisoner could not be convicted.

3rdly. That the evidence for the prosecution does not afford sufficient proof of the identity of the prisoner; while that for the defence rebuts the grounds of conviction upon this point.

On the *first* point, Circular Order, 16th July, 1830, No. 54, paragraph 13, *ad finem*; also Achumbit's case, page 43, Vol. VI. Nizamut Adawlut Reports, and Regulation VIII. of 1830, as well as legal principle and the practice of this Court shew that a *release* by a Magistrate in a case in which he is not competent to give a final order does not constitute a valid plea of *autre fois acquit*.

On the *second* point. We do not see that the Sessions Judge convicts under Act XXIV. of 1843, nor is it shewn to us by the Counsel that he does.

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On the *third* point. The evidence for the prosecution as detailed by the Sessions Judge is quite clear as to the identity of the prisoner. The confessions of the approver-witnesses of the 14th November, 1852, and 16th April, 1851, and that of Sodanondo, consistently and uniformly and clearly identify this prisoner as Brahmanondo, the brother of Ghyanondo, and as distinguished by elephantiasis. The depositions of these same approver-witnesses have been considered trustworthy by the Nizamut Adawlut for the convictions of eleven prisoners, including this prisoner's brother, in which case *this very* dacoity was charged and proved, and upon it, and no other specific dacoity those prisoners were transported for life. (Vide Nizamut Adawlut Reports, pages 98, 99, 100 and 101, January 28th, 1853, Bheem Dutt Ooray's case.)

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On the evidence for the prisoner, we have to observe that it is to the effect that the witnesses do not know prisoner by any *alias*; that he is of good character; that his brother was convicted, and has been imprisoned for life, or gone away; and that this prisoner was four years after that absent, to get medical aid. The deposition of witness Anundo Mohapatur as to his not being security for the prisoner very nearly approaches perjury.

We do not see the difference between this case and that above cited, or why under Gopal Dollye's precedent Nizamut Adawlut Report, 25th October, 1852, the sentence should have been different. But as this is an appeal, all we have to do is to reject it.

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## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND SOONDUR SINGH

*versus*

Patna. MUTHUN SINGH (No. 11,) SEETARAM (No. 12,) HULL-  
 LOOMAN (No. 13,) AND GUNESHRAM (No. 14.)

1857.

July 28.  
 Case of  
 MUTHUN  
 SINGH  
 and others.

CRIME CHARGED.—1st count, No. 11, theft of one hundred bales of cotton valued at 2,755 Rupees. Nos. 12, 13 and 14, purchasing, receiving and retaining the above one hundred bales of cotton knowing it to be stolen property.

Committing Officer.—Mr. F. A. Vincent, Deputy Magistrate of Barh.

Pleas in ap-

peal overruled.  
 Three prison-  
 ers convicted,  
 one released.

Remarks on na-  
 ture of charge  
 and finding;  
 and on prece-  
 dent N. A. Re-  
 ports May 28th  
 1855, Gooroo-  
 doss's case, and  
 on sentence.

Tried before Mr. R. N. Farquharson, Sessions Judge of Patna, on the 22nd May, 1857.

*Remarks by the Sessions Judge.*—Prisoners plead *not guilty*.

Prisoner No. 11, is a *churrundar* or agent in charge of cargo; Nos. 12, 13 and 14 are brothers, cotton merchants at Nuwada, a town some twelve miles below the city of Patna.

The facts, as described by the Deputy Magistrate committing the case, are shortly these.

In August last, notice was given to the Deputy Magistrate, Mr. Vincent, by a jemadar of police stationed at Chumpapoor in his district, that Seetaram prisoner No. 12, was purchasing cotton from a boat on the river under suspicious circumstances. The Deputy Magistrate following this up with much energy and acuteness has produced a chain of evidence to prove that the cotton in question was shipped at Futtehghurh in charge of prisoner No. 11, by whom it was brought down as far as Nuwada and there sold by prisoner No. 11, in concert with another *churrundar*, called Sumpat Panrey, to prisoners Nos. 12, 13 and 14, and another brother not apprehended, named Puhulwan, for 500 Rupees.

The defence of the prisoners before this Court is :—

*Muthun Singh*, that what he said before the Deputy Magistrate as to the cotton being sold by the Manjee and boatmen was false, and stated because the Manjee and boatmen accused him that in fact the boat and cotton, under his care went down in the river near Soorujgurrah.

*Seetaram*, that he is a large dealer in cotton, has *golas* in Patna and Nuwada, describes sundry purchases made by him about the time of the present charge, and says the bales of cotton produced in Court, Nos. 1 and 2, are among these purchases. That the police have changed the *taut* coverings and otherwise falsi-

NOTE.—N. B. This is not to be considered a settled precedent of the whole Court.

fied the marks to inculpate him. That he never knowingly bought stolen goods. That Chedeeram, who accused him before the Deputy Magistrate, is a personal enemy of his, and his brothers, owing to a charge of assault brought against Chedee by Guneshram, prisoner No. 14.

*Hullooman* says, he is not a trader and lives quite separate from his brothers Gunesh and Seeta. That he was absent in the Nipal Terai about the date of this charge. Guneshram pleads an *alibi* asserting that the forty-six bales taken by the police are the legitimate property of himself and his brother Seetaram, that the *taut* coverings have been changed and tampered with, &c.

A further defence set up by the Counsel for the prisoner refers to a report of the Kotwal of Furrukhabad to the Magistrate of that district, embodying the evidence of one Koondlal gomashtha of Golab Singh and Bahadoor Singh, owners of the lost cotton, wherein he denies that any of his master's bales were marked Nos. 50 or 51½, or with any numbers whatever, or that the names of Bahadoor Singh, Golab Singh, Sheroaram or Mudunchund were written on any of his bales.

The Counsel for the prosecution suggests that his evidence was intended to secure the insurance money, that were the boat known to have gone down in the river, they would recover the entire value from the Insurance Office, but not otherwise.

The witnesses for the defence for Seetaram depose to his, Seetaram's, having purchased cotton from merchants as described in his defence. For *Hullooman* depose to the facts of the *alibi* set up by him, and that he does not trade in cotton or share in any way with his brothers. For Gunesh that he was at Dinapore at the time he is charged with purchasing stolen goods at Nuwada, and describe certain cotton purchases made by him about the same period.

Muthun Singh produces no witnesses.

The Counsel for the defence urges the incomplete identification of the property produced as part of that stolen from Golab Singh and Bahadoor Singh, alludes to the contradiction between the evidence of Kumul Singh, witness No. 4, and that of Koondlal gomashtha before the Kotwal of Furrukhabad as to marks and numbers, also to enmity on part of Chedeeram as proved by the foudjary *missil* with the record (on the 24th June, 1854, in a case of assault charged by Guneshram against Chedeelall the Magistrate punished Chedee and four others with 25 Rupees each fine or fifteen days' imprisonment without labor.)

I consider the case most clearly proved against all the prisoners, there is nothing in their defence or the evidence in support of it, which can detract from the straightforward succinct account of the boatmen and cartmen, witnesses Nos. 1, 2, 3, 5 and

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 " " 2, Hoolas.  
 Case of " " 3, Bukhtowree.  
 MUTHUN " " 5, Kumul Singh.  
 SINGH " " 6, Doorsun Singh.  
 and others.

6.\* I see no sign of conspiracy or collusion, and have no doubt of the facts elicited in evidence for the prosecution. The defence of prisoner No. 11, so contradictory of that given before

the Deputy Magistrate, only tends to confirm belief in his guilt as derived from his statement backed by corroborating facts and depositions, there is no doubt but that the *churrundars* and boatmen combined to rob their employers and appropriate the proceeds. The identification of the cotton bales by witness No. 4†

† Wit. No. 4, Kumul Singh. is complete and satisfactory, and taken with the evidence of the boat and cartmen as to delivery of the goods and very inadequate price paid for them, is quite sufficient to convict prisoners Nos. 12, 13 and 14, of knowingly purchasing and receiving stolen property. The report of the Furrukhabad Kotwal I look upon in the light suggested by the Counsel for the prosecution, besides it cannot be received in evidence in this Court, not even having been taken on oath by the Kotwal.

The law officer convicts prisoner No. 11, Muthun Singh, of fraudulently embezzling and disposing of one hundred bales of cotton, his master's property entrusted to his care, and prisoners Nos. 12, 13 and 14, of receiving and retaining the same, knowing it to have been fraudulently embezzled and disposed of.

In this verdict I cannot concur, the charge made is theft and receiving stolen goods knowing they were stolen; the finding of the law officer differs only in words, not in sense, but would have the effect of freeing the principal offenders, the cotton merchants, who are not only depredators themselves, but the cause of depredation in others to an extent that, that if known, would appear fabulous. It is to bring home to them the charge of being receivers of stolen goods that the committal has here been made for theft, and I would strenuously uphold the principle even against the precedent of the Nizamut Adawlut of the 28th of May, 1855, in the case of Government and Gooroodass *versus* Bungseedhura and others, I would convict prisoner No. 11, of theft of one hundred bales of cotton, and sentence him to seven years' imprisonment with labor in irons, and prisoners Nos. 12, 13 and 14 of purchasing, receiving and retaining the same knowing it to be stolen, and sentence them to five years' imprisonment each with labor in irons, fining all the prisoners under Act XVI. of 1850, jointly and severally 1,950 Rupees as indemnification to the shippers for their loss of sixty-five bales at 50 Rupees the bale, which is about their market-value at this place.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This case has been referred by the

Sessions Judge on account of a difference of opinion as to the nature of the crime of which the prisoners are convicted. The Sessions Judge states that he differs from the Precedent of this Court of May 28th, 1855, Gooroodoss *versus* Bungshydhur, and would convict prisoner No. 11, of theft, and the others of purchasing stolen property knowing it to be stolen. The law officer convicts the prisoner No. 11, of embezzlement, and the others of purchasing property knowing it to be embezzled. The Counsel for the prisoners Nos. 12, 13 and 14, urges that under the precedent quoted by the Sessions Judge, the prisoner No. 11, can only be convicted of embezzlement, and that no provision is made by Act XIII. of 1850, for the punishment of parties convicted of purchasing or having in their possession embezzled property. Further, the charge as regards his clients is not made out, the cotton found in the possession of Seetaram, who deals in that and other produce, not being conclusively identified as the property of the consigners, and in fact being part of some cotton purchased by him from Hookumchand.

On the first point, we observe that Section 8, Act XIII. 1850, distinctly declares that any person who shall embezzle, or in any manner fraudulently apply, use, or dispose of any chattel, &c. of which he has possession in trust for any other person, shall be deemed to have feloniously stolen the same. The prisoner No. 11, therefore is rightly convicted by the Sessions Judge of theft; and the other parties, if guilty knowledge be proved, of receiving stolen goods.

We entertain no doubt of the guilt of the prisoner No. 11. The prisoners Nos. 12 and 14, admit that they purchased the cotton which was found in their possession, and which has been identified by Kuwalram, the agent for Bahadoor Singh and Golab Singh, of Furrukhabad. It is proved by the evidence of the Manjee and boatmen, witnesses Nos. 1, 2 and 3, that Seetaram purchased the cotton from prisoner No. 11, who was the *churrundar* of their boat; and by the evidence of witnesses Nos. 5, 6 and 7, that Seetaram and Pulwan (not apprehended) engaged carts of witnesses to bring up the bales from the *ghaut*;—and though it is not satisfactorily proved that the prisoner, Gunesh No. 14, was present at the *ghaut* when the bales were delivered, there is strong presumption of his guilty knowledge after the fact, if not at the time.

We do not think the evidence against Hullooman sufficient, for the statement of the witnesses as to his identity is so discrepant and vague, that it cannot be credited. We therefore direct that he be released.

We convict the prisoner Muthun Singh No. 11 of having feloniously stolen property entrusted to his charge, and sentence him, as recommended by the Sessions Judge to seven years' imprisonment with labor and irons; and we convict prisoners Nos.

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MUTHUN  
SINGH  
and others.

1857. 12 and 14, of having in their possession stolen property knowing it to be stolen, and sentence them to seven years' imprisonment with labor and irons. The Court consider that the purchasers or receivers of stolen goods, should, in peculiar cases like the present, be punished as severely as the principal, for it is by the ready market opened by such men to dishonest parties, that servants and others are encouraged so frequently to rob their employers, and the due security of trade receives serious injury.

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As regards the precedent quoted by the Judge and referred to by the Counsel for the prisoner, we observe that as the principals in that case were only convicted of *embezzlement*, the prisoner there, Gooroodass, could not be convicted of privity to *theft*, a crime *not* established in that case.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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GOVERNMENT

*versus*

Rajshahye.

KHOOSHEE MUNDUL (No. 5.) AND DURBESH  
SHEIKH (No. 6.)

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Case of  
KHOOSHEE  
MUNDUL  
and another.

Prisoners released. Remarks on conviction of perjury in cases of unfounded complaints by prosecutors; also on reversal of Magistrate's order of fine for false complaint.

**CRIME CHARGED.**—Perjury in having on the 28th January, 1857, deposed under a solemn declaration taken instead of an oath before the Officiating Sessions Judge of Rajshahye that a dacoity was committed on board their boat at three *pohurs* of the night of the 15th September, 1856, when moored in the river near the *haut* of Doomrai village, in which cash amounting to Rupees 381-14-6 was plundered. Such deposition being false and having been intentionally and deliberately made in point material to the issue of the case.

**CRIME ESTABLISHED.**—Perjury.

Committing Officer.—Mr. C. E. Chapman, Officiating Magistrate of Rajshahye.

Tried before Mr. L. Jackson, Officiating Sessions Judge of Rajshahye, on the 8th April, 1857.

*Remarks by the Officiating Sessions Judge.*—The prisoners have been committed under the orders of this Court for wilful and corrupt perjury. I subjoin as containing the history of the case, my remarks on the acquittal of Mundeer Mundul and Anund Paramanick on charges of dacoity and theft, where the prisoner *Khooshee* Mundul was prosecutor, prisoner *Durbesh* was a witness.

Upon the facts I think there can be no doubt, the falsity of the statements made by the prisoners is not merely proved by absolute denial on the part of other persons (witnesses Nos. 2, 3, 4 and 5,) but is also apparent from the improbable nature of the story, and the contradictions between the accounts given at various times before the darogah, Magistrate and Sessions Judge.

In regard to the law of the case, it seems to me there are two points to be considered (as to Khooshee Mundul alone) first whether his evidence before this Court was given under circumstances which render him liable to a prosecution for perjury, second whether the Magistrate's irregular proceedings in fining him for a false complaint were any bar to the present prosecution.

Upon the first question, I conclude that this Court will not be taken as bound within the same limits as confine the Magistrate's. The Sessions Court is one of more extensive powers and a wider discretion. And I am not aware that any of the recent cases in which the law of perjury has undergone discussion, have touched upon the powers of this Court.

The practice which of late years has been introduced, of making Government joint-prosecutor in nearly every case before the Sessions, has in a great degree reduced the actual aggrieved party in such cases to the position of a mere witness, which is also the English practice in crown cases, and which appears in every way reasonable.

Khooshee Mundul therefore stands in this position that the Magistrate considered his story false and excluded him from the Calendar, he being the nominal prosecutor, while the Sessions Judge thinking his evidence essential to a proper trial of the case, directed that he should be set down in the Calendar.

The prisoner was in no way placed in a worse position then, than he had been before. Assuming his story to be false and wilful, he had already given it on oath before the Magistrate, on which deposition perjury might have been as readily assigned as on the subsequent evidence given in this Court, the two statements being for this purpose entirely similar.

But I am inclined to take the broad ground, that under the old established practice of the Superior Courts, it was the right and the duty of the Sessions Judge to direct the attendance of any witness whom he considered material to the proper investigation of the case, and that any witness so summoned, making a wilfully false statement upon a material point, did so at his own proper peril.

I believe that the crime of perjury is and has been fearfully prevalent in this country, and is on the increase.

I believe that one of the circumstances which favor the increase is the uncertainty, and the difficulty of conviction in

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such cases and the resulting fact every day witnessed in our Courts of Justice that men commit acts of perjury, which every man present in Court knows and sees to be such, and yet are allowed to retire unmolested.

It seems a platitude to say that the constant occurrence of perjury is not only most injurious to individuals in particular cases, but is an obstacle to the whole administration of justice in all its branches. But the fact, however self-evident, cannot be kept too much in sight.

I do not see why we should deal tenderly with a man who being called on to make a statement in regard to certain facts, has of his own accord stated falsely, any more than we should extend mercy to a robber, who having to pass an unarmed man on a lonely spot has robbed or murdered him instead of passing on the other side, and this I say whether the statement be made before a Magistrate or in a higher Court, and I say it with particular emphasis, if the false statement be injurious to the person or liberty of others.

I am therefore of opinion that in this case the prisoner *Khooshee Mundul* being summoned by order of this Court, came into Court free to make what statement he chose regarding the subject-matter then before the Court, that having such freedom he made a false and corrupt statement calculated to injure other persons, and by so doing, rendered himself liable to the pains and penalties of perjury.

Upon the second point, I am clear that the Magistrate thinking part of the prisoner's allegation true, and having determined on sending the case for trial in this Court, had deprived himself of all jurisdiction over the subject, and that his order fining the prisoner was made *coram non judice* and absolutely void.

But more than that, the Magistrate punished the prisoner for a false allegation of dacoity, the fact of theft being in his opinion established. Whereas this Court in concurrence with the opinion of its jurymen, finds the facts of theft, equally with that of dacoity, as stated by the prisoner to be wholly untrue, and in doing so, goes much further than the Magistrate. It thus pronounces a matter as to which the Magistrate did not and could not come to a conclusion, and upon either of these principles I conceive it is competent to pass its own order wholly irrespective of previous and irregular proceedings.

In conformity, therefore, with the verdict of the Law Officer, I convict both prisoners of wilful and corrupt perjury, and sentence them each to three years' imprisonment with hard labor in irons.

Remarks in the case of Mundeer Mundul and Anund Paramanick charged with dacoity and theft and acquitted at the Sessions held in January, 1857.

The prosecutor Khooshee Mundul was an agent of Gorachand

Shah, employed to trade on his account receiving a certain proportion of the profits as his remuneration.

He made a complaint at the thannah that a dacoity had been committed in his boat, and ready-money to the amount of 381 Rupees carried off. The prisoners were arrested immediately afterwards with 6 Rs. and 56 Rs. in their possession respectively, and as they had been employed in the prosecutor's boat, it was suspected that this money was part of that which the prosecutor had lost.

The darogah however reported that no dacoity had in his opinion been committed, but a theft, on which charge the prisoners were put on their trial. The Magistrate after investigation took the same view of the case, and committed the prisoners to the Sessions on charges of theft and knowingly having in their possession stolen property. He likewise fined the prosecutor 50 Rs. commutable to four months' imprisonment for a false complaint, and did not insert his name nor that of his brother a witness in the case in the Calendar. The prosecutor appealed, and the fine was reversed in this Court partly because the misnomer which the prosecutor appeared then to have made use of, namely, 'dacoity instead of theft, did not appear to amount to the offence of false complaint punishable summarily by the Magistrate, but also mainly because the Magistrate had no jurisdiction to punish, as the case in which prosecutor had made his complaint was yet pending for trial before this Court.

The order was consequently quashed as illegal, and when the commitment came up for trial, as the prosecutor's name did not appear in the Calendar, while it was obvious that his evidence was of great importance. The proceedings were returned with an instruction to the Magistrate to set down the prosecutor's name, and to record a count for dacoity and another for theft.

The case came up this day, and was tried with the assistance of two respectable Jurymen.

After taking the prosecutor's evidence which was full of the most improbable statements, it appeared that his brother above-mentioned *Durbeshi* otherwise Durbashi, was in the neighbourhood, upon which, under Section 25, Act II. of 1855, he was called upon to give his evidence which was to the same purport as that of the prosecutor, but contained several discrepancies and still more improbable statements. He stands witness No. 0.

Then came witness No. 7, *Pertab Paramanick* who it was said, had been sleeping in the boat with prosecutor and last witness when the alleged dacoity took place. His testimony directly contradicted their's in every material point and had in contradistinction to their's every appearance of truth.

As there was no other evidence to the fact of theft or dacoity, and as the depositions of witness No. 8 and others taken before

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the Magistrate appeared still more conclusive against the presumption of either offence having been committed, I asked the Government vakeel, who conducted the prosecution whether he thought it worth while to carry the case further, on which he declared that he did not consider it advisable to do so.

The Jury at once expressed their opinion that there was no ground for believing that either theft or dacoity had taken place, and as under these circumstances it would manifestly be futile to proceed with the trial, I directed that the prisoners should be acquitted, and the prosecutor Khooshee and his brother Durbesli made over to the Magistrate with a view to their being committed for trial on the charge of wilful perjury.

I have not considered the illegal conviction and sentence by the Magistrate as to Khooshee, any bar to his being tried for perjury, as that was an act wholly without jurisdiction, and was quashed on that ground.

I consider this commitment as having been extremely injudicious and I have to notice with much regret the discreditable carelessness which has led the Magistrate to submit as the Calendar for *this trial*, the original Calendar of commitment on charges of theft and receiving, the only alteration made being an erasure of the latter charge, and the substitution of that of dacoity whilst the grounds and abstract conclude with the following words: "Considering, therefore, that the prisoners have in their possession money acquired by theft committed in the prosecutor's boat, I commit them to take their trial for the *said offence*."

These words and the charge exhibited in the Calendar being wholly at variance, a new Calendar should of course have been prepared, and I trust a similar inadvertence may not occur again.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners brought a charge of dacoity against Munde Mundle and Anund Paramanick. *That* charge was not proved against them. The Magistrate, however, committed them for theft. At the same time he punished the prisoners, (then prosecutor, and witness) by fine, for charging dacoity; when only theft was deemed proved. The Sessions Judge on the trial coming before him ordered the prisoners to be committed for perjury. He states that he gave this order because of the "improbable statements" of prisoner No. 1, the "several discrepancies" and more "improbable statements" of prisoner No. 2, and the evidence of Pertab Paramanick. The Sessions Judge then convicts them of wilful perjury, because, "there can be no doubt the falsity of the statements made by prisoners is not merely proved by absolute denial of the fact of other persons, witnesses Nos. 2, 3, 4 and 5, but is apparent from the improbable nature of the story

and the contradictions between the accounts given at various times, before the Darogah, Magistrate and Sessions Judge."

We have carefully perused those depositions of the prisoners, which alone are on the record, and cannot see that they contain any inherent proof of wilful perjury. The Sessions Judge does not set forth any *specific* "contradictions" to prove the wilful perjury; and although the charge of dacoity is not supported by the evidence adduced, yet the witnesses called by the prisoners, shew that there were some grounds for the charge brought. Further, it must be remembered that these witnesses were not in any way under the prisoner's influence. They clearly depose to prisoner at once giving information to the village police, specifying his loss, and saying he suspected Mundee and Wuzcer, and his reasons for doing so, as the parties travelling with him. It is not in any way shewn that prisoners had any malice or motive for malice, against these two thus accused.

We think it would be unsafe in a case like this to convict parties of wilful perjury, who bring what may appear unproven, or even unfounded complaints, and accuse persons they merely suspect, without more clear proof of wilful perjury, both direct and circumstantial, than appears here.

We acquit the prisoners and order their release.

With regard to the law points mentioned by the Sessions Judge, the Court consider that he passed a correct order, in reversing the Magistrate's sentence punishing the prisoner Khooshee Mundul for false complaint. The Magistrate had committed the case to the Sessions for trial. It was evident to him that an offence had been committed, though of a different degree to that stated by the prosecutor. But the whole of the case was still pending before the Sessions Judge. The prisoner could not under such circumstances be punished by the Magistrate as for false complaint. Moreover the point before him from the first was only a question of degree or misnomer. The Court observe that the Sessions Judge was competent to send for Khooshee and Durreshur to give evidence, and to order them to be committed for perjury, if he thought them guilty of it in giving that evidence. Further, when the order of the Magistrate as to the prisoner's punishment for false complaint had been reversed, there was no bar to the Sessions Judge's ordering a commitment for perjury, on his deeming the parties thus before him guilty of it.

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Case of  
KHOOSHEE  
MUNDUL  
and another.



## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

DABU CHOWKEEDAR.

Purneah.

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Case of  
 DABU CHOW-  
 KEEDAR.

Prisoner con-  
 victed; but  
 sentence re-  
 duced owing  
 to misconcep-  
 tion of duty.

CRIME CHARGED.—Murder of Chootye.

Committing Officer.—Mr. H. Balfour, Officiating Magistrate  
 of Purneah.

Tried before Mr. D. Cunliffe, Officiating Sessions Judge of  
 Purneah, on the 30th May, 1857.

*Remarks by the Officiating Sessions Judge.*—This case was  
 tried with the aid of a Jury,\* on the 28th, 29th and 30th of  
 May, 1857.

Jowhur Ally,  
 Girwur Narain,  
 Booddoo Lal.

The prisoner pleaded *guilty*.  
 The circumstances as elicited on  
 the trial are briefly these. On

the 18th March last about 12 midnight the prisoner, who is the chowkeedar of the village, heard the cry of "thief, thief" in the direction of one Niamut's house. On proceeding to the premises, he found that the deceased had committed a burglary, and was making his escape *via* the aperture by which he entered the dwelling. It being a dark night, and having a spear and *lattee* in hand, he first thrust at him with the former weapon, which entered the lower part of the back, while he was struggling from the effects of the wound, witness No. 1, and afterwards No. 11 with whom he had been conversing a short time previously, came to his assistance. The former saw the prisoner strike the deceased two blows with the club, weighing nine and half chittacks, and he died on the spot. On a light being obtained, the thief proved to be a resident of Mouzah Kakun, and although he had not been previously apprehended, yet he was known to be a notorious bad character, there were on the ground near to deceased, a "*sind kattee*," a *lattee*, knife (*lotah* and *thalee* belonging to Niamut) and a bag in which was a little rice. The prisoner acknowledged to witnesses Nos. 12, 14 and 15 that he had killed the thief, who also saw the articles above alluded to strewed about the spot, while witnesses Nos. 2 and 3 depose to the *sooruthal* taken by the Darogah, witness No. 7, who was summoned by the Magistrate, as he had attested the prisoner's confession by two illiterate witnesses Nos. 5 and 6, contrary to law. They bear testimony to the injuries discernable on the body, which are corroborated by the evidence of the Civil Assistant Surgeon, who, on making a *post mortem* examination, discovered that deceased had extensive marks of injury, the extremities were covered with contusions, so was also the

scalp, both bones of the left wrist were fractured, on the left side nearly every rib was broken, some of them in two or more places, several ribs on the right side were also fractured, the lung on the left side was lacerated from the broken ribs, these injuries he considers were the cause of death. His attention was not particularly directed to where the spear entered, the existence of a small wound may have escaped his notice. His absence from the station on duty obliged the Court to postpone the trial until the 30th May when it was resumed. The prisoner confessed before the police, the Magistrate and this Court, he pleads nothing in justification, further than there was no enmity existing between himself and deceased, as he was unacquainted with him, and it was not until he had committed the deed, that the villagers ascertained he was a resident of Kakun, and a bad character. He allows having struck the thief several blows with the spear and *lattees*, but cannot state on what part of the body they were inflicted, as it was a dark night, and he declined to hear the witnesses for the defence, as they had already deposed against him for the prosecution.

The Jury returned a verdict of guilty against the prisoner of culpable homicide in which I coincide, as the more heinous charge of wilful murder on which he was indicted cannot be maintained, there being no malice prepense observable, the night was dark, and it was manifestly the prisoner's intention to secure the burglar, but unfortunately the measures adopted were such as to cause death, and which might have been avoided, as the villagers appear to have been on the spot immediately after the alarm had been given, and aggravate the offence. From the straightforward manner in which the prisoner made his defence, he evidently thought he had performed a meritorious service, and with reference to the Court's opinion expressed in the case of Rona Sheikh and Government *versus* Sheetal Kopallee, as the sentence was considered in that case too lenient, I would recommend that the prisoner be sentenced to ten years' imprisonment with labor in irons, and as it is beyond the jurisdiction of this Court to pass such a sentence, the case is referred for the Sudder Court's consideration and orders.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley). The prisoner, a chowkeedar, has committed the crime under a mistaken idea of duty. It is evident that the thief might, with the assistance of the neighbours, have been secured as he was coming out of the hole; but we think, under the circumstances attending the capture, as the man was attempting to escape, a sentence of three years' imprisonment from the close of the Sessions trial, without irons, and a fine of Rs. 20 to be paid within fifteen days of receiving intimation of this order, will be a sufficient punishment. We sentence him accordingly.

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Case of  
DABU CHOW-  
KEEDAR.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Patna.

1857.

## GOVERNMENT AND TORUL MAHTOE

*versus*

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TOONDA SINGH (No. 5, APPELLANT,) BYJOO SINGH  
 (No. 6, APPELLANT,) AND JETHOO (No. 7.)

Case of  
 TOONDA SINGH  
 and others.

CRIME CHARGED.—Attempt at dacoity in the house of Torul Mahtoe, prosecutor.

One prisoner convicted;  
 one released.  
 Remarks on  
 entry of Nos.  
 of witnesses in  
 Calendar.

CRIME ESTABLISHED.—Attempt at dacoity with open violence in the house of Torul Mahtoe, prosecutor.

Committing Officer.—Mr. J. M. Lewis, Officiating Magistrate of Patna.

Tried before Mr. R. N. Farquharson, Sessions Judge of Patna, on the 6th February, 1857.

*Remarks by the Sessions Judge.*—Prisoners plead *not guilty*.

The prosecutor's house was attacked by a band of armed men, but they were resisted and beaten off and two of their number severely wounded and captured on the spot, one of these, Peer Allee, is since dead. The other Jethoo or Chuthoo, prisoner No. 7, accused prisoners Nos. 5 and 6, of being the leaders of the band. Jethoo is Toonda's slave (*nufur*.) At the thannah, and before the Magistrate Jethoo confessed to having belonged to the band and these confessions are fully established by evidence before this Court, vide witnesses Nos. 8, 9, 10 and 11. The other evidence against him moreover is clear and unvarying including that of Doctor Dicken, witness No. 7, as to his wounded hand. That against Toonda, prisoner No. 5, and Byjoo No. 6, is also convincing. Witnesses Nos. 1, 2, 3, 4, 5, 6, 12, 13 and 15, all speak more or less to their being concerned in the dacoity, to having recognised them by the light of the torches, to have known them well before and to Torul's riches being well known and a sufficient inducement for the attack.

Prisoner No. 5, pleads his character and respectability, and brings many witnesses to prove the same, some of them, Nos. 4, 5, 7, 8 and 9, try to establish an *alibi* which he himself never pleaded before this Court. Byjoo No. 6, pleads sickness as incapacitating him from such an exertion and also an *alibi*. Jethoo prisoner No. 7, says he was passing by the village and hearing the noise and disturbance went to see what was the matter, when he was set on and wounded and accused of the dacoity.

The jury are divided in their verdict, two of them relying on the evidence for the defence regarding the respectability of

Toonda and Byjoo prisoners Nos. 5 and 6, reject altogether that for the prosecution as to their identity with the dacoits, and acquit them, convicting only Jethoo prisoner No. 7. The third brings in a verdict of guilty against all three in which latter finding I concur.

The evidence against all the prisoners is too clear and convincing to be set aside by mere probability as to inducement and situation in life of the prisoners. Torul's wealth was well known, his house was supposed to be good at any time for 20,000 Rupees, and the earnest way in which it was guarded when attacked, shows that this character may have been well merited. I convict the prisoners Toonda Singh No. 5, Byjoo Singh No. 6, and Jethoo Kahar No. 7, of attempt at dacoity with open violence on the house of Torul Mahtoc prosecutor, and with reference to the growing frequency of such crimes and the position of the principal offenders sentence them each to ten years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Iloch and H. V. Bayley.) The evidence against the prisoner Byjoo No. 6, is insufficient, as this prisoner was not mentioned either by prosecutor or witnesses in the primary investigation of the police, but had he taken the prominent part now assigned to him, he must have been remembered and charged with the offence. We therefore direct that he be released.

The prisoner Toonda Singh is mentioned by the prosecutor and witnesses throughout as leading the attack. The confessing prisoner Jethoo is proved to be his servant, and he can assign and we can find on the record, no sufficient reason for a false charge being brought against him. The recognition of this prisoner by the prosecutor and witnesses is distinct. In his defence the prisoner pleads enmity with the prosecutor, but what is the nature or cause of that enmity he has not shewn, nor brought any proof of its existence. While admitting the improbability of a respectable man in good circumstances joining a gang of robbers to commit a dacoity, we find the evidence against him, the credibility of which as regards the fact of his presence we can see no reason to doubt, conclusive; while no plea to nullify the effects of that evidence and to show that there was some reason for his being falsely charged, has been adduced or discovered by us after a careful consideration of the record. We therefore reject the appeal.

The Court draw the attention of the Magistrate to the erroneous manner in which the witnesses in the Calendar have been numbered. There should be only one consecutive set of numbers from first to last and not one series of numbers for the witnesses for the prosecution, another for the witnesses for the defence, and a third for the witnesses called to speak to the prisoner's character.

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Case of  
TOONDA SINGH  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

MALO GARROW.

Assam.

1857.

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Case of  
MALO  
GARROW.

Prisoner convicted. Remarks on crime committed in drunkenness; and on co-operation of zemindar in apprehending prisoner.

CRIME CHARGED.—Wilful murder of Chakoolee Rahani and her son, Khaidur Raha, on the night of 20th January, 1857.

Committing Officer.—Captain W. Agnew, Magistrate of Gowalpara.

Tried before Major John Butler, Deputy Commissioner of Assam, on the 27th May, 1857.

*Remarks by the Deputy Commissioner.*—Gangman Garrow wilfully and with the intention to kill, first struck both the deceased with a *bunghurry* or Garrow *dao* (sword) and after that I, with the *bunghurry* (sword) now present, inflicted one blow on Khaidur, and he died by my hand, Kamrang Garrow seconded the blow on Chakoolee, from which she died.*Malo prisoner's statement.*I saw Malo, Gangman, Kamrang and Singram consult together to kill the deceased and about one *prohur* remaining of the night they, with their *bunghurries*, proceeded to carry out their intention. A short time afterwards on their return, I heard from Malo, Gangman, and Singram, that Malo had killed the male deceased, and Gangman the female. I do not recollect the month or date, but it was about the time of beating out the paddy, that I, and Jathing went with the abovenamed individuals to the Luckeeper *haut* and afterwards to Gendla Raha's house in Madheeparah, where the consultation was held, and afterwards I saw Malo, Gangman Singram and Kamrang Garrows go out to commit murder. Malo and Gangman solicited Jathing and me to accompany them, but from fear we did not do so, and forbade them carrying out their intention, as it was not good to do so in the time of the Company's rule, but they gave no heed to our saying, and Malo with the *bunghurry* now present, and the others, each with their *bunghurry*, proceeded to carry out their intention of committing murder. About one *dund* afterwards they returned to where I was and informed us of the deed, and it is in this manner that we became acquainted with the circumstances. Gendla Raha was not aware of the consultation, and he did not hear us, afterwards being informed of the circumstances of the murder, Gendla, Tortah and others, Rahas,Witness No. 1, Degan,  
Witness for prosecution.

previous to the consultation drank liquor with us, and had gone to their own homes and went to sleep, I had also gone to sleep, when Gungman woke me and spoke to me on the subject. I recognized the *bunghurry* now present as belonging to Malo, having always seen it with him.

I do not know why they killed Chakoolee Rahanee and Khaidur Raha. And the prisoners also did not tell me why, I am not aware that they had any enmity against them. The place, where the murder was committed, is distant from Gendla Raha's house as far as this cutcherry is from the zemindar's cutcherry, or about one and quarter flight of an arrow. Malo Garrow is not actually the husband of Gendla Raha's sister, but he is spoken of and recognized as such, and therefore he lives there, and on this account Gendla gave us a *jongah* of liquor to drink. I made known the above circumstances to Jangjang Garrow of my village and to nobody else. What I stated, as having told Gendla the morning after the murder, on leaving his house is not correct, I did not tell him any thing, and said I had from forgetfulness. I heard from the parties that Kamrang and Singram after the woman was killed hacked at her remains with their *bunghurries*.

Deposes to the same effect as the above in every particular

Jathing No. 2, witness for prosecution. and adds that Malo and the others on waking me and Dam-jar, the former said, that after the *haut* was over and they were returning, the Raha and Rahanee of Madeparrah had abused them, and said that they were going to kill them, and asked me to accompany them.

About three *prohurs* of the night of the 8th Maugh, Taka at

Hateeram Madha No. 3, witness first, and afterwards Jona Raha, to *sooruthal*. informed me that Chakoolee

Rahanee was screaming, I then with them went to her house, and found the door open, Jona and Taka went inside and I was at a distance, when they told me that Khaidur had been killed and that Chakoolee was on the point of death and being in her senses they were answered on enquiry that the Garrows had cut them and gone, this was said with great difficulty and pain. Jona and Taka on hearing the Garrows talking ran away and I went and informed the villagers, where, on collecting them, it became morning, and the neighbours went along with me and saw the bodies of the deceased, which were marked with wounds in different places, apparently inflicted with a *bunghurry*, but who could have perpetrated the deed we cannot say. After giving an *Izuhar* at the thannah, the darogah came to the spot and commenced making enquiries with a view to tracing the culprit, but could come to no conclusion as to who committed the deed, afterwards the

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Madeparrah zemindar with the assistance of Khora Dabasseah and others traced out the prisoner, Malo, as being the perpetrator, but I do not know by what clue or where he was apprehended. On examining the corpse of Chakoollee, a wound was seen from the left side of the back across the shoulder to the chest, and another less than that in the waist, and one on the left arm lengthways, and another on the top across it, and one on the left hand fingers. On examining Khaidur a wound was seen from the shoulder down into the chest, another on the head, and one on the left thigh into the bone, and another below the knee, and the left hand fingers were cut across. The deceased were my ryots, Chakoollee was old and unable to walk, and was afflicted with leprosy, Khaidur was quite a lad, aged about six years, he was fair-skinned. On the night of the murder, Taka and Jona were watching their crops about a quarter of an arrow's flight from the house of the deceased and hearing the Rahance screaming, came and gave me notice, I am not aware that any person had any enmity against the deceased.

About one *prokur* remaining of the night of the 8th Maugh, on a person by the name of  
Ronghye No. 4, witness to *sooruthal*. Posañ Raha, giving information of Khaidur Raha and her mother being murdered, I went there and saw that Khaidur was killed and Chakoollee was only able to breathe a little but not to speak, and their bodies were scared with large wounds from *bunghurries*. A short time after, on its becoming morning, Chakoollee died. No clue could be had as to who had committed the murders, but I heard from Taka that Chakoollee told him that Garrows had cut them, this is all I know, and I am not aware that anybody had any enmity against the deceased. Chakoollee was old and unable to walk, she was crippled from leprosy. Khaidur was quite a lad, aged about six or seven years, he was fair-skinned. On examination of the corpses, it appeared that Chakoollee had a long wound from the left side of the back to the chest. One on the left shoulder, another on the left arm, and one on the right hand fingers. Khaidur had a wound on his head, another on the left shoulder cutting into the chest, one on his right thigh, and another on the calf below the knee, and the fingers of his right hand were cut across.

One day in the past month of Maugh, I do not recollect the date, about one *prokur* remaining of the night, I went out to meet a call of nature, when I  
Jona No. 5, witness to *sooruthal*. heard the deceased Chakoollee give a scream from her house which is near mine. Being alone and afraid of wild animals, I went to Hatoeram Madhah's house, where I saw him and Taka blowing up a fire, and seeing me, I told them when questioned

that I heard the Rahanee screaming out, and it is necessary to go and see what was the matter; on this I with them went to the Rahanee's house, the door of which we found open and the Rahanee was moaning, went then into the house and saw that Khaidur was dead and the Rahanee very nearly so from wounds, and on questioning her, she, with great difficulty, said that the Garrows had cut her, I mentioned this to Madhee, and from fear of the Garrows went to my own house; after this, the Madhee sent for the people of the village and made enquiries, I went there no more, it being night, I did not see the wounds on the deceased very clearly and therefore I cannot describe them. I do not know that anybody had enmity against the deceased. Chakoollee was a cripple and old, Khaidur was a lad, and what cause for enmity could there have been against them? I know nothing more.

One day in the past month of Maugh, I do not recollect the date, I heard Chakoollee screaming in her house which was distant about one arrow's flight

Taka No. 6, witness to *sooru-thal*.

from my grain field, which I was watching, and on giving information of it to my master, Hateeram Madhee, Jona also who had heard the scream, came for the same purpose, and three of us lighting a fire, went to Chakoollee's house, the door of which was open, and we heard and saw Chakoollee moaning, we then entered and saw Khaidur lying dead from wounds and Chakoollee was nearly also dead, and on being questioned, she, with great difficulty, gave utterance to two words *ga, the*, from which we inferred that three Garrows had cut them. I mentioned this to the Madhee, and then returned to my house for fear of the Garrows, I did not go there any more. The Madhee afterwards collected the village people and examined the corpses. It being night, I could not distinctly see the wounds and therefore cannot describe them, I do not know any thing more. I am not aware of anybody having enmity against the deceased, Chakoollee was a cripple and old, Khaidur was a lad, aged about six years.

I know the prisoner, Malo, but have nothing in common to do with them. I was not aware of any of the circumstances of the murder of Chakoollee and

Shamrang No. 7, witness for prosecution.

Khaidur till informed of it by the Madeparah zemindar, who ordered me to find a clue for the apprehension of the murder. I, Khorah and Gordho Dobhasseah then went to Madeparah in the Garrow hills, and from thence to Dhodalparah, Gendahparah, Kengsanparah, Thosenparah, Oozurparah, Rungwageroo, and collected the Garrows of these seven villages but no one could give me any clue as to the perpetrators of the murder. Afterwards by incurring a little expence in giving the people a

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feast of liquor and rice, and questioning them, Phereng Sirdar gave a clue to the following effect, saying that on murdering any person the Garrows generally, according to custom, make some *poojah* by offering of fowls, and that he saw Malo Garrow of Ringsanparah performing some such *poojah*. I then asked the abovenamed Phereng, and Mondoi and Thangrang Sirdars to get him down from the hills and make him over to me. Eight days after Phereng Sirdar brought the prisoner, Malo, to my house, I did not say anything to him about the murder, but gave him a *jangha* of liquor to give him confidence, and the next day the above Sirdars took Malo with them saying, "Come along, the whole of the Garrows of the hills go to the *haut* at Luckeepoor, but the jemadar is very sorry that the Garrows of Ringsanparah do not visit it, you need not be afraid, whatever question may be put, I will answer for you;" having given him confidence, they took and presented him before the zemindar, when they made known that he was the man that had murdered Chakoollee and Khaidur Rahas, and the Singimarree darogah being present, they made him over to him, when he voluntarily and of his own will and accord confessed in the Garrow language that Gangman Garrow on first cutting Khaidur, he did not die, that he (Malo) then gave him a blow with his *bunghurry* which killed him, and Gangman and Kamrang killed Chakoollee by cutting them, I knowing the Garrow language and being present know and heard what was said, and what has been recorded is exactly what the prisoner confessed. The *bunghurry* now present belongs to Malo, I know it, from having seen him always with it at the *haut*. The prisoner had given this *bunghurry* to Nulram to sharpen after the above murder, and having done so and given it to him, it was found in the prisoner's house. I do not know any thing more.

I know the prisoner, Malo, but having nothing in common to do with him. On the 27th of Falgoon, on going to the *haut* at Luckeepore, I saw that Sham-

Luckhiram No. 8, witness for prosecution. rang Mundul, Khorah Dobhasseah, and Girdho Dobhasseah had apprehended the prisoner and made him over to the darogah of Singimarree and he took his *jooab*, I being present, and knowing the Garrow language a little, heard what was said, Malo acknowledged of his own will and accord that he had killed Khaidur Raha with his *bunghurry* and that two other persons, whose names I do not recollect, had killed Chakoollee. The prisoner confessed to the *bunghurry* now present being his, and that he had committed the deed with it. I do not know any thing more. The prisoner's confession has been recorded in the manner mentioned by him in the Garrow language.

Deposes to the same effect as above.

Pashan No. 9, witness for prosecution.

Thangrang No. 10, witness for prosecution.

I know the prisoner, Malo, now present, but I have nothing in common to do with him.

In the past month of Maugh, Shamrang Mundul, Khorah Dobhasseah and Girdho, made

known to me the circumstances of this case and desired me to find some clue to the perpetrators of the deed, when Phereng Sirdar made known that, according to the Garrow custom, on killing a human being, Malo, the prisoner had offered up some *poojah* in accordance thereto, when Shamrang Mundul said he did not know whether this was true or false, but if true he desired that he be apprehended and taken to the zemindar; on this seven days after, I, Mondir and Phereng Garrow took and presented the prisoner before the Madeparah zemindar, Phereng Sirdar took the *bunghurry* now present from the prisoner's house, and therefore it must be his, he had given it to Nulram a few days previous to making his *poojah* to sharpen. This is all I know.

By the prosecutor, Hateceram Madur's *izahar*, it appears that

Malo Garrow, prisoner's *jooab* at the thannah.

on the night of the 20th January, corresponding with 8th Maugh, on a Tuesday, that

Chakoolee Rahance and Khaidur Raha of Bolie Kamar were murdered. Did you commit these murders or not? Answer. I committed the murder with my *bunghurry*.

I with Gangman and Kamrang Garrows, three of us, cut the deceased up. Gangman first went into the house and inflicted a cut on Khaidur Raha, Kamrang then went in and inflicted another on Khaidur, after that I went in, and with one blow of my *bunghurry* on the right shoulder, killed him, where the other two had struck him, it being dark, I could not see, I did not cut Khaidur's mother, the other two Garrows cut her, and being dark, I could not see where and how they cut her.

In the past month of Maugh, I do not recollect the year or date, on a Sunday, I, Gangman, and Kamrang proceeded from our house and went and stopped at Gendla Raha's house in Bolie Koomar, where we drank liquor and stopped at night, the following day, Monday, early in the morning, the three of us started from there and went to the Luckee *haut*, where we stopped that night, the following day, Tuesday, early in the morning, after eating our rice there, the three of us with Degan, Singran and Jathang, six of us in all, went to the abovenamed Gendla Raha's house and stopping there that night, we got liquor from the Raha, which we drank and consulted to commit murder, Degan, Singrang and Jathang Garrows remained inside the house and I, Gangman, and Kamrang three of us with our *bunghuries*, went with the object of cutting and did cut, Khaidur and

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his mother, and then returned to the house we left, where we informed the other three of the perpetration of the deed, and then all went to sleep, and in the morning returned each to our respective houses. We met with no one on the road, and no one questioned us; after committing the murders, we wiped each our own *bunghurries* in the jungle, and proceeded on our way. On Wednesday, we went each to our homes and mentioned nothing to any one. I gave the *bunghurry*, with which I killed Khaidur deceased to Nulram of Gendalparah, to sharpen and it is with him. The *bunghurry* being marked with human blood, I gave it to be cleaned and sharpened.

We did not kill Chakoollee and Khaidur for the object of plunder, we did it under the influence of the liquor we had been drinking from which we were intoxicated.

We have not been threatened or advised in giving the above *jooab*, but have confessed of my own will and accord.

Deposed to the same effect as Thangrang No. 10, witness.

Mondir No. 11, witness for prosecution.

Gendlah No. 12, witness for prosecution.

I know the prisoner, Malo, now before me but have nothing in common to do with him.

One day in the past month of Maugh, I do not recollect the date, at night, the prisoner, Malo, Jathing, Singrang, Gangman, Kamrang, Dingren, these six persons put up at my house, and Malo took from me a *jangha* of liquor for 5 annas pice, which they kept drinking till 12 o'clock at night, I, Phapang and Totaram sat and drank liquor with them, but no conversation took place on the subject of this murder, and no consultation was held at that time for the perpetration of it, afterwards we each went to our homes and went to sleep, whether the others went any where or not I do not know; the following day in the morning when I was washing my face those Garrows departed and even then I knew nothing that had occurred. About 12 o'clock in the day I heard that Chakoollee Rahance and Khaidur Raha had been killed the previous night, but who had killed them, I did not hear. This is all I know.

I had no suspicions that the Garrows who had put up at my house had perpetrated the deed, for they were in the habit of putting up there on going to and from the Luckeeper *haut*. I did not hear the Garrows saying anything about being abused by any one either before or after drinking liquor or while they were doing so, and they did not tell me anything. The Garrows said nothing to me on taking their departure in the morning and I also did not question them.

I recognize the *bunghurry* now present as belonging to the prisoner, Malo Garrow, but whether he had it with him the night he put up at my house or not, I cannot recollect.

I do not recollect whether the other Garrows had their *bunghurry*

*hurries* with them or not, and neither they nor I were drunk by drinking the liquor.

Witnesses to the confession of the prisoner before the Magistrate.

Witness No. 13, Matra.

" " 14, Ram Singh.

" " 15, Surooah.

Witnesses for prosecution.

Malo prisoner's defence before the Panchayat.

Ditto before the Magistrate.

I have no defence to make or witnesses to produce in defence. Having got drunk with liquors at the instigation of Gangman Garrow, we went to commit murder. This Gangman knows and no body else.

I do not know Bengallee language, I require the assistance of an Interpreter.

I do not recollect the month or date, but about the time that the paddy is cut about three *prohurs* of one night, Gangman, Kamrang, and myself, three of us took our *bunghurries* and Gangman first entered the house and with his *bunghurry* inflicted a blow on Musstt. Chakoollee, while she was sleeping, which did not cut her, he gave her a second blow, on the first blow Chakoollee screamed out, but did not do so afterwards. Gangman then gave a blow to Khaidur on the waist, he ran towards the door when I gave him a blow on the right shoulder with my *bunghurry*, which deprived him of life, the deceased Chakoollee was quivering and rolling about from the two blows inflicted by Gangman when Kamrang Garrow gave her a blow with his *bunghurry* which killed her outright, the house was dark, as also was the night, there was merely some fire in the hearth, but from it little could be seen, afterwards we went and stopped for the remainder of the night in Gendla's house distant about three or four shots, the following day in the morning, the three of us together with Degan, Jatling and Singrang returned to our respective homes. We had gone the day previous to the Luckeepoor *haut* to Gendla's house, and the following day after going to the *haut*, the abovenamed six of us Garrows returned and stopped at Gendla's house where we togsther with Gendla, Dota Raha and Phen Phong drunk some liquor; after Dota and Phen Phong had got up and gone home, Gangman and Kamrang said that, while they were returning from the *haut*, Chakoollee Rahanee on passing near her house abused them, and that they would kill her, saying this, Gangman, Kamrang and myself went and committed the deed, Gendla with the other Garrow were there at the time we left, on our return we did not find him there, the other three Garrows were there and we mentioned the circumstances of the murder to them. On our going to commit the murder, Degan and the other Garrows said they would not go to commit murder; if we wished we might go.

I have confessed this of my own will and accord. I have no

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defence or witnesses in defence to produce, Khorah Dobhasseah and Pocha Jundar of the zemindar apprehended me, Gendla Raha came to my house and said, "Come along, as you have not committed the murder, you and I will become prosecutors," saying this he brought me to the zemindar's house where I was apprehended, I was acquainted with Gendla before this.

My father's name is Malsing and not Kheack as falsely stated by me at the thannah.

*By the Deputy Commissioner.*—The savage Garrows have again perpetrated another very barbarous murder at or near the village of Bolai Kamar in purgunnah Madeparah.

It appears that six Garrows, Malo prisoner, Gangman, Kamrang, Degan, Singrang and Jathing had been to a *haut* and on returning and passing by the house of the deceased woman Chakoollee, and her son, Khaidur, about six years of age, she, it is said, abused them. The party put up for the night at Gendla Raha's house, Bolai Kamar village, and were drinking liquor till 12 o'clock at night on the 20th January, when the prisoners Malo, Gangman, and Kamrang Garrows went to the house of the poor leprous woman, Chakoollee, and with Garrow swords, in the most cruel manner, killed her and her son, Khaidur, and returned to Gendla Raha's house and informed their companions of what they had done.

Nos. 1 and 2 witnesses Degan and Jathing, refused to join in the perpetration of the deed, and all the next day returned to their homes in the hills with every prospect of escaping justice, but a few days afterwards the Madeparah zemindar sent some persons to make enquiries in the hills, when they learnt from Phereng, a Garrow chief, that it was customary amongst the Garrows to sacrifice fowls after a murder had been committed and that he had seen the prisoner Malo, making such offerings. Malo was accordingly prevailed on to visit the plains, and, on being apprehended, at once confessed that he had committed the murder, being intoxicated with liquor when he did it. Gendla witness No. 12, deposes to the six Garrows, above named, having slept at his house on the night on which the murder was committed.

Although there are no eye-witnesses to the perpetration of the deed yet the circumstantial evidence of Nos. 1 and 2 witnesses, who declare they refused to join in the perpetration of the murder and the hearing of the screams of the deceased woman, Chakoollee, by Jana and Taka Nos. 5 and 6 witnesses, coupled with the prisoner Malo's voluntary confessions, duly attested by witnesses throughout, before the police, Magistrate and Jury, proves conclusively the prisoner's guilt.

The Jury and Magistrate find the prisoner Malo guilty of the charge of wilful murder, and in this I fully concur.

A poor helpless leprous woman and her son, Khaidur, a mere child of six years of age, have been ruthlessly and without any just provocation brutally murdered by the prisoner, and considering him unworthy of any clemency, and that it is necessary to teach these savage clans that they will not be permitted to commit such atrocities with impunity, it is my duty to recommend that the prisoner, Malo, suffer the usual sentence of death.

*Remarks by the Nizamut Adawlut.*—(Present : Messrs. G. Loch and H. V. Bayley.) The prisoner confesses throughout. There is no reason to distrust these confessions. They are supported by the testimony of the witnesses Degan, Jathing and others. The prisoner's only plea is that he was drunk, but this is not substantiated ; and if it were, could not be allowed to weigh against the proven facts of the case, which shew premeditated and cruel murders. We see no extenuating circumstances, and we sentence the prisoner to death.

We observe with satisfaction the laudable co-operation and assistance afforded by the Zemindar of Madeparah.

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# SUMMARY CASES.

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# SUMMARY CASES.

JULY 1857.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

LUTCHMUN AURUT

*versus*

MR. JAMES COCKBURN.

Rajshahye.

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This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. of 1841 and Circular Order, dated 18th March, 1842, by Mr. Lowis Jackson, Officiating Sessions Judge of Rajshahye, on the 9th June, 1857, with the following report.

"The questions put to the Officiating Magistrate and his replies will sufficiently indicate the objections to his proceedings; that upon which however I lay the greatest stress, being the fact that the appellant Mr. James Cockburn, has not been legally put on his defence, the filing of a *kyfeut* by an unauthorised mooktear not being a defence in the proper meaning of the word; indeed, the recorded judgment of the Magistrate and the 1st paragraph of his explanation are upon this point in direct contradiction. In the first of these he treats the defendant as having made a defence; in the second, he observes that having been "called upon to defend the charge personally or by mooktear," he failed to do so."

"If, as alleged, the defendant had disregarded the summons, the Magistrate should have had him brought upon a warrant, as criminal cases are not decided *ex parte*."

"The Magistrate has it is to be presumed, acted in this case under the 53rd, Geo. III. ch. 155, and with reference to the amount of fine inflicted, it does not appear to me that under Act IV. of 1843, I have jurisdiction to disturb his order, otherwise than by the present reference."

*Resolution by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley,) No. 529, dated the 10th July, 1857.

The Court, having perused the papers of the case, concur in the opinion expressed by the Officiating Sessions Judge that the filing of a *kyfeut* by a mooktear is not the defence which is required by law to be taken from a defendant, whether in person or by his attorney. The Court, therefore, quash the Magistrate's proceedings, and direct him to proceed according to law.

A *kyfeut* by a mooktear is not the defence required by law. Reference by Sessions Judge under Section 5 Act XXXI. of 1841, should be accompanied by explanation of Magistrate. Remarks on precedent cited of Lutchmun Aurut's case.

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The Officiating Sessions Judge is directed, in future, to send copy of any report to the Nizamut Adawlut submitted under Section 5, Act XXXI. of 1841, to the Magistrate for any explanation he may have to offer, and to forward such explanation with the report.

Before the above order was issued the following *letter* No. 439, dated the 10th July, 1857, was submitted by the Officiating Sessions Judge of Rajshahye.

"When I made the reference to the Superior Court contained in my letter No. 369, of the 9th ultimo, to your address, in the

\* Lutchemun Aurnut  
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case noted in the margin\* I was not aware of the precedent at page 1027, Volume III. Part II. of the New Nizamut Adawlut

Reports in which it seems to have been decided by the Court at large, that the terms of Act IV. of 1843, made appeals to any amount from the judgments of Magistrates acting under the 53rd Geo. III. appealable to the Sessions Judge."

"I confess that before making the reference above specified, I had carefully read through the Act IV. of 1843, without any such construction occurring to my mind."

"It appeared to me that the principal object was to assimilate the procedure as to appeal in case of orders by Justices of the Peace in the Mofussil and by Magistrates acting the statute of Geo. VII. and that it was simply designed to place appeals from those several authorities on the *same footing in all respects* as appeals from the Magistrates in the exercise of their *ordinary jurisdiction*. The right to a certiorari being reserved where no appeal had been (or could be?) made."

"It occurred to me that before the passing of Act IV. of 1843, convictions by the Magistrates under the 53rd Geo. III. could not be disturbed notwithstanding Act XXXI. of 1841, except by a writ of certiorari (but in this I am probably wrong,) that the purpose of the Act was to make them appealable like other orders of Magistrates, and that if it had been intended to make them so irrespective of the amount of fine, some such words as "without limitation as to amount" would probably have been employed in Section 1."

"I am far, however, from presuming to set up my judgment against that of the Court, and if I had been aware of the precedent of course I should not have made the reference."

*Final Resolution by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 560, dated 20th July, 1857.

The reference made by the Officiating Sessions Judge on the 9th ultimo, in the case of James Cockburn, was disposed of on 10th instant, previous to the receipt of the present communication of the Officiating Sessions Judge. The Court then decided the point on which the reference was made, and concurring with

the Officiating Sessions Judge, quashed the Magistrate's proceedings. But the Court did not enter into the question brought forward in paragraph 4 of the letter of the Officiating Sessions Judge of the 9th June. The Officiating Sessions Judge will, of course, be guided in future in the disposal of similar appeals, by the precedent he has quoted.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

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GOVERNMENT

*versus*

CHOTA BHOLIE HERKARA.

24-Pergun-  
nahs.

This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. of 1841, by Mr. E. Latour, Sessions Judge of 24-Pergunnahs, on the 18th May, 1857, when the Nizamut Adawlut recorded the following Resolution.

1857.

July 10.

Case of  
CHOTA BHO-  
LIE HERKARA.

RESOLUTION.

The Court observe from the Deputy Magistrate's explanation of the 13th May, that that Officer after calling for an explanation from the Dâk Moonshee imposed a fine upon him. The petitioner, it would seem, is appointed by the Zemindar under Clause 4, Section 10, Regulation XX. 1817, to superintend the Dâk for the transmission of police reports. The Court remark that the only party responsible to the Deputy Magistrate for neglect in the transmission of these reports, is the zemindar; there being no law (however desirable such an enactment might be) by which these dâk servants can be punished for neglect of duty. The Court therefore reverse the Deputy Magistrate's order, and direct that the fine, if realized, be refunded.

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Remarks on  
the illegality  
of fining Ze-  
mindarce Dak  
Moonshee.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

HURRY CHUNG.

Dacca.

1857.

July 29.

Case of  
HURRY  
CHUNG.

Conviction  
quashed; and  
prisoner ac-  
quitted; he  
having been be-  
fore acquitted  
on the same  
charge.

CRIME CHARGED.—1st count, having (in company with other thugs) murdered by thuggee Sonatun Bunnick and his servant (name and residence unknown) at Bungsheegunge zillah Mymensingh in March or April, 1831 or 1832, corresponding with Falgoon or Cheyt, 1238 or 1239; 2nd count, having plundered from the murdered men cash Rs. 50, a pair of “*bhala*” and a *chundrohar* made of silver, and having received his share of the same; 3rd count, being by profession a thug and having belonged to a gang of thugs under Sirdars Kishore Sen and Ramlochun Sen (convicts) under provisions of Act XXX. of 1836.

Committing Officer.—Captain C. H. Keighly, assistant dacoity Commissioner.

Tried before Mr. J. E. S. Lillie, Sessions Judge of Dacca, on the 22nd May, 1857.

*Remarks by the Sessions Judge.*—Three approvers\* have related the particulars of various

- \* Wit. No. 1, Kishoreo Sen.  
 ” ” 2, Ramlochun Sen.  
 ” ” 4, Neetaie Chung.

acts of thuggee in which they were engaged with the prisoner, and it appears that they and another approver accused him in their original statements in 1841 and 1842. Witnesses Nos.

- † Wit. No. 6, Gungaram Bunnick.  
 ” ” 7, Goluck Munnee.

6 and 7,† have deposed that they are the heirs of two of the murdered persons alluded to in the above depositions, and that their relations disappeared at the time stated by the other witnesses.

The prisoner states in his defence that the approvers were apprehended through the instrumentality of his brother, a burkundaz; and contends that his (prisoner's) age shows that he could not have committed the acts with which he is charged. Three witnesses have deposed regarding his present mode of livelihood.

I concur in the *futwa* of the law officer which acquits the prisoner of the first two counts, but I would recommend that he be convicted of having belonged to gangs of thugs and that he be transported for life.

It should be mentioned that the appearance of the prisoner shows that he is not less than fifty years of age.

*Resolution of the Nizamut Adawlut.*—(Present : Messrs. G. Loch and H. V. Bayley.) No. 585, dated 29th July, 1857.

1857.

July 29.

Case of  
HURRY  
CHUNG.

The Court observe that the Sessions Judge and Law Officer concur in acquitting the prisoner of the 1st and 2nd counts. The 3rd count, is belonging to a gang and is brought under Act XXX. of 1836. The committing officer, in column 13 of his Calendar, containing the grounds of commitment, records of the prisoner : "He was *recommitted* on the general charge of being a professional thug ; and *acquitted*." The prisoner cannot be *convicted* on the *same charge*, for which he has been before committed and *acquitted*. The Court quash the conviction as illegal. They observe that the Sessions Judge has given no opinion of the pleas in prisoner's defence, and neither he, nor the law officer give any reasons for their acquittal of the prisoner on the 1st and 2nd counts ; nor for the recommendation for a conviction on the 3rd count. The Judge is directed to give his reasons in all cases.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

NO. 72 OF 1857. SPECIAL CRIMINAL APPEAL.

PEAREE RAI

*versus*

NUTHOORAM MOODEE, APPELLANT PETITIONER.

Bhaugulpore.

CRIME CHARGED.—Plundering property.

*Abstract grounds of appeal.*

1857.

July 27.

Case of  
TEETOORAM  
TEWAREE.

1st, want of jurisdiction, inasmuch as any dispute regarding the forcible taking away the crop should have been decided by the Collector under Regulation V. of 1812, and not by the Foujdary Court, because the appellant attached and sold the effects of the prosecutor by application to the Sale Commissioner for arrears of rent due.

2nd. The Magistrate considering the appellant an opulent man inflicted on him a punishment of fine in addition to that of imprisonment, and has moreover considered him as guilty of the charge, though not proved against him. The Sessions Judge has also recorded the attachment effected by the appellant to be an act of oppression which is contrary to the practice of the Courts in trying such cases.

Criminal authorities cannot interfere in cases of distraint, not involving breach of the peace.

JUDGMENT.

The petitioner urges that as he had distrained the complainant's crops for arrears of rent, and sold them in liquidation of

1857.

July 27.

Case of  
TETTOORAM  
TEWARREE.

that arrear, the Criminal Courts have no jurisdiction, there having been no breach of the peace; and that the legal remedy, in the Collector's Court or by Civil suit, is provided for any damage the complainant might suffer by the proceedings of the petitioner.

As the complainant to the Magistrate has a legal remedy, either by summary or regular suit, provided for him, we consider that the Magistrate was acting beyond the law, and his jurisdiction, in trying this case; and his sentence of imprisonment and fine, confirmed by the Sessions Judge on appeal, is illegal. The Criminal authorities cannot interfere in such case; the jurisdiction in them is expressly confined by law to the Civil Courts, or to the Collector when acting judicially under Regulation VIII. of 1831. We therefore reverse the orders of the Sessions Judge and Magistrate, and direct that the petitioner be released.

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REGULAR CASES.

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AUGUST,

1857.





REGULAR CASES.

AUGUST, 1857.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

HURRYNARAIN TANTEE.

24-Pergunnahs.

1857.

CRIME CHARGED.—Wilful murder of Bilashee Chokree, &c.

Committing Officer.—Mr. J. J. Grey, Magistrate of Howrah.

Tried before Mr. T. Loch, Additional Sessions Judge of 24-Pergunnahs, on the 1st June, 1857.

August 4.

*Remarks by the Additional Sessions Judge.*—This case was tried with the aid of a jury.

Case of  
HURRYNARAIN TANTEE.

The prisoner pleads *not guilty* and in his defence states enmity on account of non-payment of rent, but calls no witnesses.

Prisoner convicted and sentenced capitally. Remarks on manner in which Calendar was prepared.

The case in itself is very simple, and I am sorry to say a very common one, arising as these cases do from the vanity, or perhaps more properly speaking the prejudices of parents, placing ornaments of value on their children.

The prisoner was intimate with the family to which the deceased belonged, and they lived close together.

On the day of the murder the child\* was seen last playing

\* Aged nine years.

near the prisoner's house, as she did not return in the evening, her mother

became anxious and commenced a search in which she was assisted by several of her neighbours, but all to no effect, enquiries were naturally made at the prisoner's house, but his mother was unable to give any satisfactory account, all she could say was that they were not in the house at that time, which was perfectly true. A watch was kept, and the prisoner was intercepted on his return home; when first accosted, he was in a very nervous, agitated state and was quite unable to answer clearly the questions put to him, he subsequently confessed and pointed out the body of the child, which he had thrown into a *khál* and which shewed, on examination, how brutally the poor child had been cut (vide Civil Surgeon's evidence). he also pointed out where he had concealed the ornaments and the *dhao* with which he had perpetrated the deed. The whole of the above facts is clearly established by the evidence and leaves no doubt on my mind that the child was murdered by the

1857.

August 4.

Case of  
HURRYNARAIN TANTEE.

prisoner. The jury bring in a verdict of "guilty" in which I concur, and not seeing the slightest extenuating circumstance in the case, recommend that the prisoner Hurrynarain Tantee be sentenced capitally.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner confessed; and it is clearly proved that thereupon he pointed out the corpse of the deceased child, the bill-hook and the ornaments. The finding and identity of all these is satisfactorily proved by independent testimony. The fact of the prisoner having taken away the child that evening, and of her having been last seen alive with him, is also proved clearly. The manner in which the prisoner was found by the relatives of the dead child, who were in search of it, and the fact of prisoner being unable to account for her, and his subsequent confession, complete the evidence against him.

We see no extenuating circumstances in the case, and sentence the prisoner capitally.

The Court observe that the Abstract of information and grounds of commitment in Column 13 of the Calendar are placed before the Sessions Judge in a very clear and satisfactory manner by the Officiating Magistrate, Mr. J. J. Grey.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

Mymensingh.

1857.

August 4.

Case of  
SHEIKH  
PAGOREEAAH.

## GOVERNMENT AND SHEIKH BEROO

*versus*

SHEIKH PAGOREEAAH.

CRIME CHARGED.—Wilful murder of Moyna Aurut.

Committing Officer.—Mr. H. S. Porter, Deputy Magistrate of Jamalpore.

Prisoner convicted on his own confessions, and strong circumstantial evidence.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 30th May, 1857.

*Remarks by the Sessions Judge.*—There were no eye-witnesses in this case and the only direct evidence against the prisoner is his confession at the thannah, which he repeated before the Deputy Magistrate. The prisoner's statements as gathered from his confessions is, that he was given to understand that during his absence from home one of his neighbours, by name Kurreem, had paid his wife an improper visit, of which he complained to his landlord's naib; that this created in his mind a suspicion of his wife's infidelity, and on the day charged seeing some pice in the hands of his wife (the deceased) his suspicion

was aroused and he asked her where she got the pice from, but she evaded his question and entered the western house, where the prisoner followed her and there tied her hands and feet up and cruelly assaulted her, and also put a cord round her neck to prevent her calling out; that he thrust some pice up her private parts with a *panjun* or stick used for driving cattle with, and when he found that the deceased was struggling and in her last moments he tightened the cord round her neck and suspended her to a beam of the house, and gave out that she had committed suicide by having hung herself. In this Court the prisoner denied the charge and urged that the deceased hung herself, and that his confession before the police was extorted by ill-treatment and that he confessed before the Deputy Magistrate, having been intimidated by the Police to do so.

The Civil Assistant Surgeon attributes death to have been caused by strangulation by the application of a cord, the impression of which remained on the neck, and that there were also several contusions on the body, that in addition to these injuries there were found ten pice wrapped up in a piece of plantain leaf and lodged in the rectum near the orifice of the anus.

The Law Officer is of opinion that the charge of wilful murder is not proved against the prisoner, but declares him guilty of culpable homicide on violent presumption. I differ in this finding. It is evident from the prisoner's own confession before the Police and the Deputy Magistrate, which have been proved on the evidence of the subscribing witnesses thereto, that the prisoner forced the pice with a stick into the deceased's private parts and severely assaulted her, and that before she had ceased to breathe he hung her by the neck, which leads to the presumption that the prisoner wilfully and deliberately put an end to the deceased's life on suspicion of her infidelity, and not from any sudden impulse, for according to his own statement, he proceeded in a most deliberate manner, in having first tied up the deceased's hands and feet and put a cord round her neck to prevent her calling out, and then in hanging her while still alive, and these are facts which go to show that his object was to take her life to get rid of a wife whose fidelity he suspected. If the prisoner's object had merely been to chastise his wife by way of correction, what necessity was there for his placing a cord round her neck to prevent her calling out, and then afterwards in hanging her? The prisoner stated before the Deputy Magistrate as a ground for extenuation that he hung the deceased only when she was about to expire from the effects of the beating to save himself from the consequences, but as he admits that he hung her before life was extinct, and the Civil Assistant Surgeon attributes death to having been caused by strangulation, it is manifest that he completed her death by that mode.

1857.

August 4.

Case of  
SHEIKH  
PAGOREEATI.

1857. The prisoner also denies his confessions in this Court, but he has not even attempted to prove that they were otherwise than free and voluntary; considering on the above grounds that the prisoner is fully guilty of the wilful murder of his wife Moyna Aurut, I would convict him of the same and recommend under the circumstances that he be imprisoned for life in transportation beyond sea with labor and irons.

August 4.  
Case of  
SHEIKH  
PAGOREEAAH.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence against the prisoner consists of his voluntary confessions before the police, repeated to the Magistrate, and corroborated by the *post mortem* examination. The prisoner confessed that suspecting his wife (the deceased's) fidelity on her refusing to tell him how she had obtained some pice which he saw in her hand, and suspecting them to have been given by some lover, he followed her into the house, and tied her hand and foot, and round the neck, with a rope used for tying up the cows. He then struck her two or three blows; and, with a stick for driving cattle, thrust the pice up her private parts. The ligature round her neck throttled her, and prevented her calling for assistance. The prisoner then untied her hands and feet, and while the deceased was still palpitating, hung her up to a beam in the house to make it appear that the deceased had hung herself. Prisoner then left the house, shutting the door, and the deceased's body was discovered some time after by his mother when she entered the house; and, on the prisoner being called for, he declared she must have hung herself in a fit to which she was at times subject. The prisoner took the body to the thannah, and repeated the story that the deceased had committed suicide. The body was sent in and examined by the Civil Surgeon, who reported that the deceased had died from strangulation, that there were contusions on the body, and that pice wrapped in a plantain leaf were found in the rectum near the orifice of the anus. The Magistrate then directed the Darogah to enquire into the case, but before his order reached that officer, the prisoner had been charged with murder by the brother of the deceased, and confessed to having killed her in the manner above described.

At the Sessions trial the prisoner pleads *not guilty*, and declares that his confession to the Darogah was extorted, and that he repeated it to the Magistrate from fear of the Police burkundazes, who accompanied him to the station. The confessions are proved by the attesting witnesses to have been made voluntarily. The body was sent to and examined by the Civil Surgeon, and the pice found in the rectum of the deceased *before* the prisoner was charged with the murder, and *without* the knowledge of the Police then, as to the insertion of the pice in her body. Thus, it is impossible that the Darogah could have invented the confession, while the discovery of the pice by the

Civil Surgeon attests strongly the truth of the confession made by the prisoner.

We therefore convict the prisoner, and though it does not appear that he at first intended to murder the deceased, yet the deliberate manner in which he afterwards hung her up, after having treated her most brutally, knowing that life was not extinct, shews that a determined purpose to take life had then been formed in his mind. We sentence him capitally.

1857.

August 4.

Case of  
SHEIKH  
PAGOREEBAH.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

WASSEEMOODDIN.

Hooghly.

1857.

August 5.

Case of  
WASSEEM-  
OODDIN.

CRIME CHARGED.—1st count, forgery in having for his own advantage prepared or caused to be prepared a forged paper (marked A) purporting to be a "*ladavee*" executed on stamp paper by one Mahomed Sahban in favor of one Mussumat Sukeenah Bebee; 2nd count, filing the above "*ladavee*" in the Court of the Deputy Magistrate of Jahanabad in a case of dis-possession under Act IV. of 1840, in which he was a defendant, knowing the same to be forged.

CRIME ESTABLISHED.—Knowingly filing a forged document.

Committing Officer.—Moulvy Abdool Lateef, Deputy Magistrate of Jahanabad.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Hooghly, on the 15th May, 1857.

This is a very clear case. An Act IV. of 1840 case is under trial before the Deputy Magistrate of Jahanabad, the prisoner being the respondent, he files three exhibits, one of which is a '*ladavee*' deed dated 11th Joyt, 1219, on stamp paper which has the date of sale 13th of March, 1813. On comparing these dates, it was discovered that the date of the execution of the deed was *ante* to that of the sale of the paper on which it was written, viz. nine months and twenty days, that is to say, the corresponding English date of the deed is 23rd May, 1812, while the date of the sale of the paper is as above stated 13th March, 1813, thus shewing on the face of it that it is a fabricated document made for some fraudulent purpose. There being thus no doubt as to the forgery, it is also clearly proved that the prisoner gave the same to his mooktear to file, and it is also evident that he caused it to be filed with the intent of

Prisoner released; circumstances not warranting presumption of guilty knowledge. Remarks on imperfect record.

1857.

August 5.

Case of  
WASSEEM-  
ODDIN.

benefiting by it, for it purported to be a deed drawn up by the father of the plaintiff in the Act IV. case, giving up all claim to the piece of land under dispute. The only question is as to the prisoner's knowledge that the deed was a forgery.

The vakeel on the part of the prisoner can only urge ignorance, stating that his client is a "*chasa*" and was the last person likely to suspect or detect the discrepancy of dates, but it appeared to me that the prisoner was a shrewd man and evidently knew what he was about. I therefore, agreeing with the *futwa* of the law officer, convict him of knowingly filing a forged document and sentence him to seven years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) In this case there is no proof whatever that prisoner forged the deed alleged to be a forgery. There is at the same time no doubt or denial that he uttered it. The question to be decided by us is whether he uttered it with a guilty knowledge. The intent is to be presumed from the circumstances of the case. The circumstances affording presumption against him are that prisoner filed the deed in support of his claim in an Act IV. case, and that he asserted to the Deputy Magistrate on the 3rd December, that the document was true, and that the date of the endorsement of the stamp-vendor of the 12th of March, 1813, had been found correct by comparison with an almanac; whereas, the fact is, that the 11th March, 1813, was 30th Phalgun, 1219, while the deed purports to have been executed on the 11th Joyt, 1219, or 23rd May, 1812. It is to be observed that this assertion is entered in the Deputy Magistrate's proceeding of the 3rd December, but not recorded and signed (as it should have been) as the separate statement of the prisoner. The circumstances affording a presumption in favor of the prisoner are, that he never attempted to conceal his uttering; that the document is one that has been derived from his ancestors, and does not directly or originally specify any contemplated benefit to him; that the prisoner, intending to utter with a guilty knowledge, would not, except under a misapprehension, have adverted to a reference to the almanac, which the Deputy Magistrate would be sure to verify; further, if the deed had been forged recently, the forger would have taken care to make the dates correspond; and as the present custom amongst stamp vendors is to write both the Bengalee and English dates, there would not have been, as there is in this case, the informality of the English date only being given. If the deed be genuine, there may have been a mistake as to the English year, when it was prepared.

We acquit the prisoner, and direct his release.

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PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

RAMROOCH AND GOVERNMENT

*versus*

JUGGURNATH (No. 4,) AND LUCHMON (No. 5.)

Sarun.

1857.

CRIME CHARGED.—No. 4, 1st count, burglary and theft of property valued at Rs. 194-1, belonging to Ramrooch Krumkar, plaintiff; 2nd count, having part of the said stolen property in his possession knowing the same to have been acquired by theft. No. 5, 1st count, burglary and theft of property valued at Rs. 194-1 belonging to Ramrooch Krumkar, plaintiff; 2nd count, being privy both before and after the fact.

August 6.  
Case of  
JUGGURNATH  
and  
LUCHMON.

CRIME ESTABLISHED.—Nos. 4 and 5, the same as crime charged.

Appeal re-  
jected. The  
evidence for  
the prosecu-  
tion being suf-  
ficient.

Committing Officer.—Moulvee Azarool Huq, Law Officer, with full powers of a Magistrate, Zillah Sarun.

Tried before Mr. G. L. Martin, Officiating Sessions Judge of Sarun, on the 27th September, 1856.

Remarks on  
examination of  
witnesses; on  
the police pro-  
ceedings; on  
preparation of  
Comparative  
Statement,  
and on entry  
of Charge.

*Remarks by the Officiating Sessions Judge.*—This case was disposed of by the Law Officer, who sentenced the prisoners to two years' imprisonment each with labor in irons, but on appeal to the Sessions Judge, as it appeared that the case was beyond the competency of the lower Court, the sentence was quashed, and the prisoners ordered to be committed.

Owing to the Law Officer being the Committing Magistrate, a jury of two persons was empanelled to assist in the trial of the case, the circumstances attending which are as follows. The prisoners, Nos. 4 and 5, effected a burglary in the house of the prosecutor on the night of the 29th August last, and in helping themselves to some metal utensils, aroused the prosecutor's father, who was sleeping in the room which the burglars had entered: he immediately gave the alarm to his son, the prosecutor, who rushed out, and seized the prisoner No. 4, who had in his hands a sword and hatchet. The noise brought the witnesses Nos. 1 and 2, to the spot in time to assist in the capture of both prisoners, and a *sind-katee* was found on the prisoner No. 5. The witnesses Nos. 8, 9, 10 and 11, were also attracted by the noise and saw the prisoners apprehended at prosecutor's door. Subsequently, but the same night, it became known that the wife of the prisoner No. 4, residing in the village, had been seen to throw some property into the *nullah* just below her house, on which, search being made, the property,



1857.      Nos. 26 to 33, was discovered in presence of witnesses Nos. 1 and 2, and is recognised by them as belonging to prosecutor. August 6.      On the arrival of the police and search of the house of prisoner No. 4, the property, Nos. 1 to 16, was found in it, in presence Case of      of witnesses Nos. 3 and 4, and at the same time the property, JUGGERNATH      Nos. 17 to 25, also belonging to the prosecutor and recognised and      by the witnesses Nos. 1, 2, 3 and 4, was found in the *nullah* at LUCHMON.      the back of the said prisoner's house.

The prisoner No. 4, pleads that as he was crossing the *nullah* on the night in question in company with the other prisoner, whom he met by accident, with the view of proceeding to a neighbouring village to buy silk thread, he was set upon by the prosecutor and witnesses Nos. 1 and 2, the former being the servant of Baboo Kalipershadnarain with whom he, prisoner, is at enmity, and by them was beaten and charged with this burglary, the hole in the prosecutor's house which had been made by some burglars in *Sawan* previous having been re-opened for that purpose, prisoner No. 5, follows the above defence, and pleads that he was formerly servant to Bindeseri, brother of Kalipershad, who wanted to have connexion with his wife, whereupon they quarrelled and prisoner left him, the latter threatening revenge.

The prisoner No. 4, refused to examine the witness he had called on the plea of their having been bought over by the prosecutor No. 5, examined witnesses Nos. 23, 24, 25, 27 and 28, but they failed to make good his pleas.

I concur in the verdict of the jury which convicts the prisoners on both counts of the indictment, and pass upon them the sentence which I have recorded in the Calendar.

*Sentence passed by the lower Court.*—Each to be imprisoned with labor in irons for five (5) years from the 27th September, 1856, and both conjointly to pay a fine of Rs. 170-5-6 under Act XVI. of 1850,

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners were taken in the act of committing the robbery, and property identified as that of the prosecutor was found in the house of the prisoner, Juggernath. The defence they make of ill-will on the part of the Zemindar, and the claim of Juggernath to the property discovered in his house, are unsupported by any evidence; further, the account the prisoners give of their coming together, on the night of the robbery, is contradictory and unsatisfactory. In appeal, the prisoner, Juggernath, urges that the Zemindars were his witnesses, and they were not examined on the trial, and their evidence would have cleared him of the charge. We find, however, that though the witnesses were not present at the trial, the prisoner, on being asked, stated that he did not wish to examine any witnesses. We reject the appeal.

The Court observe that there has been but little cross-examination of the witnesses either by the Sessions Judge or Law Officer, who committed the case. The witnesses to the finding of the property contradict themselves, and no attempt to reconcile the discrepancies, or to obtain an explanation of them has been made. The Court further remark that when the primary proceedings of the Law Officer were quashed by the Sessions Judge, and the case was ordered to be committed for trial, the Law Officer directed the Darogah to make a fresh local investigation, and a record of it was made *de novo*. Both of these measures were unnecessary and improper ; for if the Mohurrir's investigation was considered sufficient when the Law Officer convicted and sentenced the prisoners, it ought to have been equally so for committment. If further investigation were necessary, (that made by the mohurrir being, as alleged by the Law Officer, imperfect,) it should have been made before the Law Officer completed the first trial, and sentenced the prisoners. The Court further observe that the articles entered in Column 12, of the Comparative Statement, should bear the numbers marked on them by the Darogah. No numbers are given in that column. The Judge's attention is drawn to the Court's Circular Order of the 23rd September, 1856, No. 28, which prescribes that the charge on which a prisoner is convicted should be clearly and distinctly entered in Column 10 of the Abstract Statement of parties punished without reference to the Nizamut Adawlut.

1857.

August 6.

Case of  
JUGGUENATH  
and  
LUCHMON,

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus**Trial No. 7.*

KIRTEEBASH OORIAH (No. 1,) MUDDUN DAS  
OORIAH (No. 2,) AND GHOTTA MEER (No. 3.)

*Trial No. 8.*

KIRTEEBASH OORIAH (No. 1,) PITTEMBER BHUT-  
TACHARJEE (No. 2,) AND MUDDUN DAS (No. 3.)

*Trial No. 9.*

KIRTEEBASH OORIAH (No. 1,) GOBIND MUNDLE  
(No. 2,) AND MUDDUN DAS (No. 3.)

*Trial No. 10.*

24-Pergun- KIRTEEBASH OORIAH (No. 1,) PITTEMBER BHUT-  
nahs. TACHARJEE (No. 2,) AND MUDDUN DAS (No. 3.)

1857.

August 15.

Case of  
PITTEMBER  
ACHARJEE and  
others.

Prisoner re-  
leased. Pro-  
ceedings as to  
search and  
confession not  
satisfactory.  
Attention call-  
ed to C. O. of  
26th May,  
1854, and 30th  
June 1857.

CRIME CHARGED.—*Trial No. 7.*—1st count, burglary in the  
house of Kuroonah Bewah and theft of property belonging to  
the said Kuroonah to the value of Rs. 7-10; 2nd count, (against  
No. 1,) receiving stolen property knowing that it had been  
stolen.

*Trial No. 8.*—1st count, burglary in the house of Damoodur  
Banerjee and theft of property belonging to the said Damoodur  
to the value of Rs. 951-8; 2nd count, receiving stolen property  
obtained in the said burglary knowing that it had been so  
obtained.

*Trial No. 9.*—1st count, burglary in the house of Kameenee  
Khankee and theft therefrom of property belonging to the value  
of Rs. 510-6; 2nd count, receiving stolen property obtained in  
the said burglary, well knowing that it had been so obtained.

*Trial No. 10.*—1st count, burglary in the house of Madhub  
Lusker and theft therefrom of property belonging to the said  
Madhub Lusker and to Pittember to the value of Rupees 8-8;  
2nd count, against Nos. 1 and 2, receiving stolen property  
obtained in the said burglary knowing that it had been so  
obtained; 3rd count, against No. 2, privity to the said burglary  
and theft.

CRIME ESTABLISHED.—*Trials Nos. 7, 8, 9, and 10.*—Bur-  
glary.

Committing Officer.—Mr. H. Fergusson, Magistrate of the  
24-Pergunnahs.

Tried before Mr. Thomas C. Loch, Additional Sessions Judge,  
on the 14th May, 1857.

*Remarks by the Additional Sessions Judge.*—There are four burglaries in which the above parties are more or less implicated, consequently the investigation into all four had to be completed before sentence was passed in any one.

The burglaries are as follows :—

*Calendar No. 7.*—Burglary and theft of property to the value of Rupees 951-8 in the house of Damoodur Banerjee, on the night of the 9th December, 1856.

*Calendar No. 8.*—Burglary and theft of property to the value of Rs. 7-10 in the house of Kuroonah Bewah, on the night of the 18th of February, 1857.

*Calendar No. 9.*—Burglary and theft of property to the value of Rs. 510-6 in the house of Kameenee Khankee, on 29th January, 1857.

*Calendar No. 10.*—Burglary and theft of property to the value of Rupees 8-8 in the house of Madhub Luskur, on the 1st of January, 1857.

At the time, no trace could be discovered of the perpetrators of the above burglaries, and it was by Luchmun chowkeedar (witness No. 1) letting fall some observations regarding the burglary charged in Calendar No. 7 when he was drunk, that the clue was obtained. This man when taken to the thannah and interrogated, it having been promised him that nothing he should say would be used against him, made a statement implicating the prisoners. These men were apprehended and also confessed to the several burglaries and on their houses being searched, portions of the stolen property was found in several of them.

I must here premise that without corroborative evidence, I would not have for a moment taken Luchmun chowkeedar's evidence as conclusive, he evidently neither before the Police nor Magistrate stated the whole truth against himself, and in this Court his whole testimony was most unsatisfactory, so much so, that I would not examine him in the case charged in Calendar No. 10.

Prisoners Nos. 1, 2, 3 and 6 are charged with the burglary set forth in Calendar No. 7. They are denounced by witness No. 1, but the chief evidence against Nos. 1, 2 and 3, are their detailed confessions before the Police and the Magistrate and portions of the stolen property having been found in their houses, as also two "*sind katees*" having been discovered in prisoner No. 3's house. The property discovered is clearly proved to be Damoodur Banerjee's, the identity of the cloth is particularly well established by the *dhobee*, Damoodur's private *dhobee* mark on the cloth he was wearing and that produced as stolen property being identically the same. There is no reason why Damoodur should now claim the property as his own through enmity, to get the prisoners into trouble, for if he had

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had any desire to do so, he could have accused the prisoners at the time when he first reported the burglary.

Prisoners Nos. 1 and 2 do not call any witnesses, and those of prisoner No. 3 are his own ryots or people otherwise connected with him. I did not examine the witnesses of prisoner No. 6, as the charge was not established against him. The Law Officer and I concur in finding prisoners Nos. 1, 2 and 3 guilty of the burglary charged and acquit prisoner No. 6.

Prisoners Nos. 1, 2 and 4 are charged with the burglary set forth in Calendar No. 8. The prisoners all confessed fully before the Police and Magistrate, which confessions are proved to have been voluntary. They simply deny the charge before me, but call no witnesses. I put every faith in their confessions, which when taken into consideration with the other cases under trial leaves no doubt in my mind as to their guilt. I therefore concurring with the Law Officer convict them.

Prisoners Nos. 1, 2, 5 and 7 are charged with the burglary set forth in Calendar No. 9. The chief evidence against the prisoners Nos. 1, 2 and 5 are their detailed confessions before the Police and Magistrate, and portions of the stolen property having been found in their possession. The property was clearly identified by Kameenee Khankee and the other witnesses. The prisoners plead not guilty before me, but would not have their witnesses examined. There being doubts as to the finding of the property in prisoner No. 7's house, he has the benefit of the doubt, he also denied all knowledge of the burglary before the Magistrate. I therefore agreeing with the Law Officer convict prisoners Nos. 1, 2 and 5 and acquit prisoner No. 7.

Prisoners Nos. 1, 2, 3 and 6 are charged with the burglary set forth in Calendar No. 10. Prisoners Nos. 1, 2 and 3 made clear and detailed confessions before the Police and the Magistrate, and portion of the stolen property was found in the house of prisoner No. 1. Prisoner No. 6 made only a *quasi* confession before the Police. That the confession of prisoners Nos. 1, 2 and 3 were voluntary is proved in evidence. I, therefore concurring with the *futwa* of the Law Officer, convict prisoners Nos. 1, 2 and 3 and acquit prisoner No. 6.

It may be considered that I have put too much faith in the confessions, but when confessions are clear and minute and given before an officer of undoubted integrity, and when such confessions would have justified such officer in convicting and punishing the prisoners had the punishment been within his powers, and such conviction would have stood good before a Court of Appeal, I consider that a Sessions Judge is quite justified in relying on such proof of guilt. The result of the above trials are as below.

Prisoner No. 1, Kirteebash Ooriah and prisoner No. 2, Muddun Doss are convicted in all four burglaries.

Prisoner No. 3, Pitembur Bhuttacharjee, is convicted of the charges laid against him in Calendars Nos. 7 and 10.

Prisoner No. 4, Ghotah Meer is convicted of the charge laid against him in Calendar No. 8.

Prisoner No. 5, Gobind Mundul, is convicted of the charge laid against him in Calendar No. 9.

Prisoners Nos. 6 and 7, Doorgaram Byragee and Ramchand Doss, are acquitted. It is therefore ordered that prisoners Nos. 1 and 2, be imprisoned for (10) ten years with labor and irons. That prisoner No. 3, be imprisoned for seven (7) years with labor and irons.

That prisoners Nos. 4 and 5, be each imprisoned with labor and irons for three years, and that sentence of acquittal be passed on prisoners Nos. 6 and 7. It is also ordered that the value of the property stolen and not recovered be realized under Act XVI. of 1850.

I have to notice that the darogah, when unable to execute the search warrant himself, should have issued a "*hookum namah*" agreeable to Regulation XX. of 1817, Section 16, Clause 5. It should also have been put on record in what manner the search was made and in whose presence. I also notice there are no "*sooruthals*," although witnesses to such are entered in the Calendars. The chief witnesses to the search of the several houses and finding of the property are police officers, this is objectionable. Why the darogah did not take a more personally active part in the investigation does not appear.

A copy of this *rooeedad* is to be filed with each of the cases and a copy sent to the Magistrate for his information.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The only appellant in this No. is prisoner Pitember Acharje. The prisoner Mudhoosoodun appeals in a separate trial: No. 501. The Counsel for Pitember Acharje pleads:

1stly. That the evidence of Luchmun chowkeedar is repudiated by the Sessions Judge even, and is replete with important contradictions in the different Courts in which it is given; for instance that this witness *at the thannah* says that he learnt the fact of the robbery by passing the spot when the prisoners were dividing the spoil, and they bribed him not to tell; while to the Magistrate, he says, he was himself a party to the preconcerting the robbery; that at the thannah this witness says he gave information the day after the thefts, (which were on the 19th Aghun in the case in Calendar No. 7, and on the 19th Pooos in that in Calendar No. 10,) while to the Sessions Judge he states that when four or five days of Maugh remained he got information of the theft in the case in Calendar No. 7.

2ndly. That the property found with prisoner in Calendar No. 7, (none was found in the case in Calendar No. 10,) was

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put there surreptitiously. To prove this, he points out that there are three witnesses to the search, two of whom did not see the property produced, and the third was a police burkundaz, and therefore incompetent to be a witness to the search. That the darogah reports that the search was *after* prisoner's apprehension, while the witnesses to the search state that it was at 12 or 1, and the darogah himself reports prisoner's apprehension at 5 P. M. on the 7th; again, that the prisoner's brother had sued the jemadar who conducted the search, which suit was a cause of enmity; further, that Luchmun witness indicated at the thannah the exact *petarrahs* and places where the property would be found, which was of itself most suspicious. The Counsel adds, that the articles found with his client were not mentioned in the *first* schedule of property filed by the prosecutor, but only in that given *after* the search.

3rdly. That by the darogah's own shewing, prisoner was apprehended on the 7th at 5 P. M. and did *not* confess till 12 on the 9th; and was then instantly sent in and had his confession taken within two hours before the Magistrate, a proceeding directly opposed to Circular Order, No. 73, page 78, Volume I.

We observe that the Sessions Judge does not rely on the evidence of Luchmun chowkeedar. We find it contains the contradictions stated, and is not reliable. The evidence of two of the three witnesses to the search shews that it was not carried on *bonâ fide* before them. The third is a police burkundaz who should not have been a witness, if other respectable villagers were there, and there is nothing to shew that there were not. The record also shews the contradictions pointed out by the Counsel as to the hour of the prisoner's apprehension on the 7th and that he was not sent in till the 9th. Further, that his confession was taken at the police about noon on the 9th and at the Magistrate's between 2 and 4 P. M. on that day. This proceeding is, we think, against the spirit of the Circular Order cited by Counsel. Lastly, except articles Nos. 11 and 12, the rest of the property found with prisoner, viz. articles Nos. 13 to 18 are only entered in the second schedule of the prosecutor, which was filed *after* the search of prisoner's premises. It is to be added that the jemadar, in his evidence, admits that prisoner's brother brought a suit against him, the jemadar. The Court are of opinion that a conviction would, under these circumstances, be unsafe; and they direct the prisoner's release.

The Magistrate and Judge are both requested to see proper attention paid to Circular Order No. 5, of the 26th May, 1854, p. 4. v. 2. of Carrau's Edition, i. e. that requiring a Comparative Statement to accompany Calendars; also to Circular Order No. 16, of the 30th June, 1857, requiring a mark to be put against the names in the Calendar of the witnesses examined at the Sessions.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND TARUCKNATH GHOSE

*versus*

SHEIKH NUZUR ALLY.

24-Pergun-  
nahs.

1857.

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Case of  
NUZUR ALLY.

CRIME CHARGED.—1st count, theft of three Notes of the Bank of Bengal Nos. 21514, 21628 and 21604 for one hundred Rupees each with 9 Rs. 8 as. in cash, one knife and one handkerchief, the property of the prosecutor Tarucknath Ghose; 2nd count, keeping in his possession one of the abovementioned Notes No. 21514 for Company's Rupees one hundred knowing it to have been obtained by theft.

CRIME ESTABLISHED.—Keeping in his possession one of the abovementioned Notes No. 21514 for Company's Rupees one hundred knowing it to have been obtained by theft.

Committing Officer.—Baboo Nilmony Mitter, Deputy Magistrate of Howrah.

Tried before Mr. T. C. Loch, Additional Sessions Judge of 24-Pergunnahs, on the 30th May, 1857.

Remarks by the Additional Sessions Judge.—It appears that the prosecutor travelled by Railway, on the 28th of July, 1856; on his reaching his destination he discovered the loss of the above Notes and a few other articles. The Notes he at once stopped at the Bank, No. 21514 Note was presented to the Bank by one Modhoo Soodun from whom it was traced to Brijonath Dafi and Issur Pal (partners) and from them, to Kasheennath Poddar of Sulkeah, Kasheennath Poddar on referring to his books found that he had received it from Nuzur Ally (the prisoner) from whom he had changed it, on one Hurochunder Ghose stating that he knew Nuzur Ally.

The above was all done privately, but on the 17th December last, a *beynamee* petition was presented to the Deputy Magistrate who ordered the darogah of Sulkeah to make an enquiry, which he immediately did, and on the same day procured Kasheennath's "*khatta bahee*" in which the entry of the receipt of the Note and the disbursement of the Rupees in exchange, appeared.

The prisoner denies the charge and states in his defence that the Note was paid into Kasheennath's shop by one Haleem, and that he was only his "*matoburee*," and that this is proved by Haleem desiring to compromise the case with the prosecutor, for which the said Haleem had borrowed from him (the prisoner) Rs. 91 on a bond for Rs. 100, which he says was found

Prisoner released, the proof of his having stolen the Note being insufficient; and his having found it, and appropriated it not knowing who the owner was, and before the owner claimed it, not being felonious.



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in his house when it was searched. Many witnesses are called to prove the above, and their evidence is so accurately corroborative of the defence set up, that makes it most suspicious.

There is no evidence to support the 1st count, the prisoner is therefore acquitted of the same, and it only remains necessary to examine the evidence affecting the 2nd.

The simple question to be decided is, whether the prisoner or Haleem paid in the Note to Kasheenath? The evidence that the prisoner did, rests on Kasheenath's evidence, who appears a most respectable Poddar doing a large business, and the entries in his account-book, which evidently is genuine, for it is written up the very date that it was taken from his shop by the police. The evidence against Haleem merely rests on the suspicious evidence produced for the defence which is *too good to be true*.

The case has been tried with the aid of a jury, who did not hesitate to bring in a verdict of guilty in which I perfectly agree, and therefore sentence the prisoner to three years' imprisonment with labor and irons.

I omitted to state that it is also ordered that Rs. 100 be taken from the money found in the prisoner's house and given to the prosecutor under Act XVI. of 1850.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It is needless for a decision of the guilt or innocence of the prisoner to recapitulate the earlier stages of the case. The question *on that point* is merely whether Nuzur Ally, as the Poddar Kasheenath asserts, gave him, the Poddar, the Bank Note:—or whether, as Nuzur Ally states Haleem gave Kasheenath the Bank Note, and Nuzur Ally merely identified the said Haleem.

The Counsel for appellant, (Baboo Unookool Mookerjee,) urges, (1st.) That as there is no theft proved against any one, the prisoner cannot be legally convicted of having in his possession stolen property. (2nd.) That there is no proof, whatever, except Kasheenath's words and an unattested entry in his account-book (*khatta bahee*) to refute prisoner's denial. (3rd.) That the *khatta* book produced with prisoner's signature is not to be trusted, being mere scraps of memoranda, and not an account-book properly producible in evidence. (4th.) That the deed of sale, found in prisoner's house when he had no command of the search of it, bears out prisoner's averment that he merely endorsed the Note in regard to the identity of Haleem, and that the prisoner's own statement supports this view. Lastly, that Act XVI. of 1850 was not intended to apply to cases of this kind.

We observe that the Note was restored to the prosecutor at the conclusion of the Sessions trial, whereas it should have been kept till the period of appeal had expired, or the conclusion of the trial here. The Court have, therefore, sent for the Note

and *khatta bahees*. The former is endorsed, as far as is legible, *Nuzur Ally ..... ba ..... Sheikh Haleem*, and a word illegible from the cutting of the paper of the Note at the bank. The Counsel contends that the illegibility should be allowed as a doubt in favor of the prisoner, with reference to his plea, that it contained the word "*chini*," and thus shewed that prisoner merely identified Haleem. He also urges that Section 44, Act II. of 1855, will only go so far as to affect the passing of the Note, not the identity of the endorser, or the particulars of endorsement not detailed in the *khatta bahee*.

We think it clearly established that Nuzur Ally was the person who changed the Note as deposed to by the witness Kasseenath, but no theft is proved to have occurred. The prosecutor lost three Bank Notes, and one of them found its way into the possession of Nuzur Ally;—how, he did not account for. He states that Haleem brought the Note, and that he merely identified Haleem, and endorsed the Note accordingly; but this statement is contradicted by the books and deposition of Kasseenath, the correctness of which we see no reason to question. There is, however, no proof that Nuzur Ally stole the Note. If he found it, and appropriated it, not knowing who was the owner and changed it before the owner came forward to claim it, no felony was committed by him, and he must be acquitted of the charge.

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Case of  
NUZUR ALLY.

PRESENT :

A. SCONCE AND J. S. TORRENS, Esqs., *Judges*.

GOVERNMENT AND RAMKANT DOSS

*versus*

NOBOKISSORE DOSS.

Moorshe-  
dabad.

CRIME CHARGED.—Willful murder of Prosunno Aurut, the sister of the prosecutor.

1857.

Committing Officer.—Mr. W. C. Spencer, Officiating Magistrate of Moorsheadabad.

August 26.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorsheadabad, on the 16th July, 1857.

Case of  
NOBOKISSORE  
Doss.

Remarks by the Officiating Sessions Judge.—The darogah of thannah Harharpara on the 22nd May last, reported to the Magistrate, that one Prosunno Aurut had been found murdered in the house of her brother Ramkant Doss in Jawalpara, and as the deceased's husband, the prisoner Nobokissore Doss, being the last person seen with her, suspicion immediately pointed to him as the murderer; search was made for him but he

Prisoner re-  
leased; the  
evidence for  
his conviction  
being insuffi-  
cient.

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Doss.

was not to be found, and a reward was therefore offered for his apprehension, and on the 31st idem he was seized by Alfoo Chowkeedar, witness No. 1, as he was leaving the city of Moorshedabad.

There are no eye-witnesses to the deed, and the prisoner has been committed on circumstantial evidence alone. The Law Officer, on the question being put to him, declared that the crime of the wilful murder of Prosunno Aurut was not proved, but on giving his *futwa* he declared that though not proved according to Mahomedan law, yet that the deceased met her death by a wound in her neck caused by the sickle before the Court, and as it was not probable that that wound was self-inflicted, and as the prisoner absconded and was shewn to have been in the house before her death, and had given contradictory defence, and as he was not on good terms with the deceased, the prisoner was guilty of the wilful murder of Prosunno Aurut on violent presumption. With this *futwa* I do not agree, and I am of opinion that though there is strong suspicion against him, yet that suspicion is not sufficient for his conviction on so grave a charge.

Ramkant the brother of the deceased (named in the Calendar as prosecutor but whom I made a witness in the case) certifies to his having left the deceased and the prisoner together early in the morning when he went to his daily work in the fields, and the two had no quarrel or dispute, and states that about 12 o'clock in the day Dripow Bewah witness No. 6, went to him and told him that the prisoner had killed the deceased; he accordingly went to his house and found her murdered, with two wounds on her neck, her eye destroyed, and a small cut on her hand; he suspected the prisoner and charged him with the crime, though he could give no reason for his having committed it.

The witness No. 6, Dripow Bewah says she went at about 9 o'clock in the morning to the house to call her brother Gopal Doss, that the deceased was then there alone and well but the prisoner was not to be seen, that she then took Gopal Doss away with her and at about 12 o'clock she was told by Rhebuttee witness No. 12, that the prisoner had killed the deceased and had absconded; there is some discrepancy as to whether this witness went to the house then and *after* seeing the body went to call Ramkant, or whether she called him before seeing it, but that point is immaterial, she says also that she was herself personally aware that the deceased did not wish to return to her own home with the prisoner.

The witness No. 12, Rhebuttee deposed to having come from her own village about 11 o'clock to see her relatives Ramkant and the deceased, and on reaching the house she found the prisoner and deceased there, and at the prisoner's desire she went

to bathe at a distant tank, having had some oil given to her by the deceased, and on her return about one and half hours afterwards, she found a purda down across the door, the deceased lying murdered on the floor and the prisoner absent; she then called out to the neighbours and on their coming she left the place and returned to her own village. This witness also declares that she did not tell Dripow Bewah of the murder or even see her that day.

A sickle covered with blood was found close to the body; this sickle the brother Ramkant says is his own, and that the prisoner's sickle, straw-hat and "*deowlee*" were not in the house when he returned.

The witnesses No. 7, Thakoor Doss, and No. 8, Mothoor declare that about 12 o'clock in the day, as they were returning from their labor, they met the prisoner running towards the north, and on questioning him, he said he had been beaten by the villagers and was going to the Magistrate to complain and that he had a sickle in his hand, but I am not disposed to place much confidence on their evidence, as it gives me the impression of having been concocted by the police to strengthen the case; and had the prisoner been seen with the sickle, he must also have had the "*deowlee*" as that also had disappeared from the house, according to Ramkant.

The only evidence therefore against the prisoner is, the fact of the witness Rhebuttee having seen the prisoner and the deceased together, and on returning about one and half hours afterwards finding the deceased murdered and the prisoner absent. I do not think the prisoner can be said to have absconded, as there is no evidence on record to shew that much search was made for him, and he accounts for his non-appearance by saying before me that he was unaware of the murder until he was seized while returning from the city, where he had been three days, and that previous to those three days he had been at his own village, after leaving the house of Ramkant, and though this account does not tally quite with the account he is said to have given to the police, yet as no evidence was produced to his having really told the police what was recorded on his defence, I do not consider it proved that he did give the statement to them that he is said to have done; I am of opinion that the police finding suspicion put upon the prisoner made more endeavours to prove him guilty than to find out who the real murderer was, and the prisoner was not questioned closely in the Magistrate's Court as to his proceedings.

As the circumstantial evidence, to bring home so serious a crime to the prisoner, ought to shew, indisputably, that no one but the prisoner *could* have committed the murder, and as the evidence does not shew that, I give the benefit of the doubt to the prisoner, Nobokissore Doss, and recommend that he be

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Doss.

acquitted. The prisoner has been ordered to be released on bail, and the Magistrate reports that he has not been able to procure it, the Magistrate was further requested to pay the reward for the apprehension of the prisoner according to his proclamation.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) We agree with the Sessions Judge that the wilful murder of Prosunno charged in this case against the prisoner is not proved.

The deceased Prosunno was the wife of the prisoner; at the time of her death, she was residing in the house of her brother, Ramkant. It appears that Ramkant early on the morning of the 22nd May, had gone to plough his fields, leaving Prosunno and prisoner at home: that about noon he was called back by his sister, Dripo, who told him that prisoner had murdered his (prisoner's) wife; and that Ramkant immediately returning found her senseless, but not quite dead. Dripo says she was told of the murder by a woman, Rhebuttee; that she went straight and told her brother, Ramkant, and returning with him, found Prosunno dead. Rhebuttee (who lives three miles off,) says that a little before noon she had come to see Ramkant, and found prisoner and his wife sitting, talking; that prisoner told her to go and bathe; that after getting some oil from Prosunno, she went; that coming back after four "*dunde*," she found Prosunno murdered; that she went off crying out, and many villagers came, but that she did *not* see Dripo, nor tell her of the murder. Finally, two men, Thakoor Doss and Muthoor Doss, brothers, say, that as they came back from ploughing, they saw prisoner running off, and on being accosted by them, he said he had been beaten by the villagers.

Such is the meagre and unsatisfactory evidence in this case. Deceased was found lying with her throat cut, and near her head, a bloody sickle. Rhebuttee, appears from the evidence first to have discovered the murder: and she herself professes to have alarmed the villagers; but not only is the tenor of this woman's evidence unsatisfactory in itself, but she denies having spoken to or having seen Dripo; and from the abstract statement of witnesses examined by the darogah, no information is shewn to have been derived from her. The darogah says only that Ramkant's "*mamee*" was not found, and was not examined. And even Dripo, before the darogah, said nothing, as she did before the Sessions Judge, of having seen and spoken to Rhebuttee at different times on the morning in question, and of having been informed by her of the murder. Again Rhebuttee, when examined by the Magistrate, said, that on the discovery of the murder, she told two persons, Gopal and Oodayt; but we find no corroboration of this statement: and though a person of the name of Gopal was examined both by the Magis-

trate and darogah, this person did not say that he had seen Rhebuttee, or that she had told him of the murder.

We have no reliable evidence sufficiently to connect Nobokissore with his wife's death ; and we acquit him of the charge, upon which he has been tried.

We would observe that as the evidence is imperfect, so also in some respects it appears the enquiry has been incomplete.

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Case of  
NOBOKISSORE  
Doss.

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# SUMMARY CASES.

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AUGUST.

1857.





SUMMARY CASES.

AUGUST, 1857.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 77 OF 1857.

RAUJCHUNDER DOSS, PETITIONER.  
MR. ALLAN, COUNSEL FOR PETITIONER.

CHARGE.—Obstructing a public road.

*Abstract grounds of appeal.*—1st. During the trial of the case before the Judges of this Court, Petitioner filed a petition praying to have his case tried by five Judges, and the Judges stated in their order that such prayer could be admitted if precedents were shewn. Petitioner prays only that this petition for review be admitted, and that his case be tried by five Judges.

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nahs.

1857.

August 11.

Case of  
RAUJCHUN-  
DER DOSS  
and others.

JUDGMENT:

This is an application for a review of our Summary Decision of the 18th May, 1857, page 727, Nizamut Adawlut Reports for that month.

Mr. Allan admits that he cannot produce precedents which can overrule the full bench precedent of Dalrymple's case cited by us.

He urges, however, that the question of the propriety of that precedent is one of much importance, inasmuch as the effect of the Construction of Act XXXI. of 1841, ruled by it leaves subordinate Courts more or less at liberty to act irrespective of all supervision in Judicial proceedings other than Criminal trials.

It is for us of course on this bench only to administer the Law; and in addition to the precedent cited, we would refer for our view of the intent of Act XXXI. of 1841, to the decision of the 28th February, 1857. (Present: Messrs. Sconce and Loch) pages 610, 611 and 612 of Summary Cases, Nizamut Adawlut Reports for that month.

Under this view, we reject the appeal.

On Section  
2, Act XXXI.  
of 1841, and  
inadmissibi-  
lity of appeals  
from judicial  
proceedings  
other than cri-  
minal trials.  
Dalrymple's  
case cited.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 65 OF 1857.

BUNCOO BEHAREE BOSE AND OTHERS, PETITIONERS.

MR. R. T. ALLAN, COUNSEL FOR THE PETITIONERS.

Nuddea.

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Case of  
BUNCOO BE-  
HAREE BOSE  
and others.

Case decid-  
ed under Sec-  
tion 2, Act  
IV. of 1840 is  
not admissible  
in summary  
special appeal  
before Niza-  
mut Adawlut  
under Section  
2, Act XXXI.  
of 1841, and  
Dalrymple's  
case cited.  
Special pleas  
as to Act  
XXXIII. of  
1852 over-  
ruled.

*Abstract grounds of appeal.*—1st. That petitioners in the year 1248, B. S. obtained a *ijarah* lease of Deehy Serpore, &c. 16 Mouzahs in Pergunnah Alumpore, and having enjoyed possession of them leased them in *dur-ijarah*, in the year 1262. That Jadub Chunder Bose had possession of them as *dur-ijarahdar*. The opposite parties having taken out an execution of decree against Issur Chunder Pal and others were about to take possession of the said *ijarah* mehal. But this objection having been raised in an Act IV. of 1840, the Deputy Magistrate passed an order that the aforesaid mehals should be held in the possession of the opposite parties. Petitioners preferring an appeal, the Sessions Judge decided the two cases together, and confirmed the decision passed by the Deputy Magistrate. It is pleaded that in an Act IV. case, it is to be considered whether the party holds previous possession; and that in this view petitioners had the right of *ijarah* and *dur-ijarah* in the mehals. But that the zillah Judge has passed his order for the disputed mehals to be left in the possession of the opposite party, alleging them to be in our names as *benamee* of the judgment debtor. 2nd. Petitioners' possession in the disputed mehal by virtue of *ijarah* and *dur-ijarah* lease is fully established by the *fysallahs* of 13th November, 1849, and 21st July, 1851, and several other *fysallahs* of the Civil Court, and more especially by the *fysallah* under Regulation VIII. of 1831. This case is not one for a decision under Act IV. of 1840. 3rd. The decree-holders (opposite parties) hold a decree against three-fourths of the property, and the exact portion of the co-sharers cannot be decided. Therefore the orders of the Zillah functionaries are against the law. 4th. Section 10 of Act IV. of 1840 and Constructions Nos. 1059 and 1333 are not applicable to this case.

JUDGMENT:

Counsel states that the opposite party Ramchunder Pal Chowdry obtained a decree in the Supreme Court for the possession of lands in zillahs 24-Pergunnahs and Nuddea. Further, that the decree provided that the possession of parties, not parties to the suit, was not to be interfered with. On execution being taken out in the Zillah Courts, proclamations were issued calling

upon parties who had any objections to make, to appear and prove their claims. Certain objectors did appear before the Judge of the 24-Pergunnahs, who, after enquiry, rejected their claims as summary civil cases; and possession was given in due course to the decree-holder. The Civil Judge of Zillah Nuddea, however, considering the terms of the Supreme Court decree to be stringent, refused to give the decreeholders possession by ousting the petitioners who are farmers of certain villages. The decreeholders on this presented a petition to the Magistrate, complaining against the petitioner as being likely to cause a breach of the peace with the intention of ousting him. The Deputy Magistrate caused the institution of a suit under Act IV. of 1840 to try the question of possession, and thereupon on trial gave a decree in favor of the decreeholder. His order was confirmed by the Sessions Judge on appeal, though that officer had himself on the Civil Side refused to give the decreeholders possession. The petitioner urges that the decreeholder should have sought to obtain possession under Act XXXIII. of 1852 only, and that it was illegal on the part of the Magistrate and of the Sessions Judge to give him possession under Act IV. 1840.

From the proceedings submitted to the Court it does not appear how or at whose application the case under Act IV. of 1840 was instituted, but from the Sessions Judge's proceeding of 11th June, 1857, it appears that the case was remanded on 11th January last to the Deputy Magistrate to enable the objectors (the present petitioners) to prove their *bonâ fide* possession as *ijarahdars*. We observe that if there was any likelihood of a breach of the peace, the Deputy Magistrate had full authority under Section 2, Act IV. 1840 to try the fact of possession summarily, and the order of the Sessions Judge confirming the decision of the Magistrate is final; for under the precedent of *Dalrymple's case and others*, based on it, (*Vide Nizamut Adawlut Reports, February 28th, 1857, page 610, and May 18th, 1857, page 727,*) we hold that the decision under Act IV. 1840 being passed in a judicial proceeding other than a criminal trial, is not open to appeal to this Court, under the provisions of Section 2, Act XXXI. of 1841. We therefore reject the petition.

1857.

August 14.

Case of  
BUNCOO BE-  
HAREE BOSH  
and others.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 75, of 1857.

TORABALLEE KAZEE AND KOMARALLEE KAZEE,  
 PETITIONERS.

Backergunge.

VAKHEEL OF PETITIONERS, MR. GOODEVE.

1857.

CHARGE.—Murder.

August 22. *Abstract grounds of appeal.*—1st. The decision passed by the Sessions Judge is illegal, inasmuch as he has convicted us on the evidence of witnesses once rejected. It is also very unjust on the part of the Nizamut Judges to confirm such decision of the Sessions Judge.

Application for review rejected: pleas of Counsel being overruled. 2nd. The gun that has been seized is ours, but the reason assigned by the Judges of this Court that none in the village save ourselves had a gun is not consistently borne out by the dictates of sound judgment.

3rd. It is evident from the depositions of the witnesses on the record that Zuheer was at our house. Hence it is illegal to sentence us to a severe punishment on the mere guess that Zuheer was at the house of Omedallee Kazee.

4th. It is very improper for the Sessions Judge to take the depositions of witnesses again, when the case was sent for re-trial, and it is unjust to uphold such an order.

5th. The punishment inflicted on us is too severe, considering the nature of the charge.

## JUDGMENT :

*Mr. G. Loch.*—Toraballee Kazee and Komarallee Kazee, petitioners.

Mr. Goodeve.—Counsel for the petitioners.

Application for a review of the judgment of this Court passed on 27th April, 1857. (V. page 565, et seq.)

In this case we find that on the 11th April, 1856, Ashgur Moollah brother of the deceased gave information at the thanah that Toraballee, Komarallee and others attacked the house of Oomedallee Kazee on the preceding night at 3 A. M. A counter-charge was preferred by Toraballee that Oomedallee and his people, including the deceased, had attacked his premises with intent to commit a dacoity. The Magistrate proceeded to the spot, and on the 26th April, examined Oomedallee and his witnesses, and after inspecting the premises of Toraballee, and finding no signs of a dacoity, was of opinion that the case was

one of riotous attack on the premises of Oomedallee in which riot Muddun Mohun was killed by a gun-shot wound. The police investigation led to the same conclusion. The Magistrate subsequently sent for the witnesses Nos. 1 to 15, and after examining them considered the case to be one of mutual affray, commenced by Oomedallee having attacked the house of Toraballee for the purpose of rescuing one Zuheer. He accordingly brought in Oomedallee and the parties, (previously examined as witnesses,) as being engaged in the affray, and committed both parties to the Sessions for trial, and entered the names of witnesses Nos. 1 to 15, into the Calendar to prove the charge of affray with homicide. The Sessions Judge rejected the evidence of these witnesses for reason assigned in his report, (See pages 565 and following of Volume VII. 1857, Nizamut Adawlut Reports,) and released Oomedallee and his party; and after taking their evidence as directed by this Court on the 8th November, 1856, convicted the petitioners Toraballee and Komarallee and others of a riotous attack in the house of Oomedallee Kazeer with the wilful murder of Muddun. The view of the case taken by the Sessions Judge was considered by this Court to be correct, and as the evidence against the prisoners was considered sufficient for conviction, they were on the 27th April, 1857, sentenced as recommended by the Sessions Judge.

Toraballee and Komarallee now apply for a review of that judgment; and the chief pleas urged by Counsel on their behalf are as follows:—

1st. That several of the witnesses, on whose evidence the petitioners have been convicted, were originally charged by them as being concerned in an attack on their (petitioner's) house, and their object is of course to shift the crime from their own to the petitioner's shoulders. Further, these witnesses are more or less connected with or under the influence of Oomedallee.

2nd. The evidence of some of the eye-witnesses is so contradictory in itself, regarding main points, besides being contradicted by the statements of other witnesses, that their evidence is unworthy of credit.

3rd. Deducting the evidence of parties who are manifestly interested, there remain only three witnesses, the contradictions in whose testimony render them unworthy of credit, and their evidence cannot be held conclusive against the mass of independent testimony produced for the defence.

4th. The Magistrate considered this a case of affray with homicide, and the Jury with whose assistance the Sessions Judge tried the case, and who had the advantage of examining the witnesses *visd voce*, came to the same conclusion, while this Court is obliged to form its opinion from a critical examination of the record; and such comparison has shewn the evi-

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Case of  
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dence for the prosecution to be contradictory, and consequently insufficient for conviction.

5th. The Court have remarked on the similarity of the evidence given by the witnesses Nos. 1 to 15, as having the appearance of being tutored, but if this similarity is manifest only in chief points, which must be patent to all, and not in minute particulars, the objection to the evidence falls to the ground.

The points noted in the first plea were duly considered by us when the record was formerly before the Court. I do not think the evidence is to be rejected *in toto*, though it must be admitted with caution. Little trust, I admit, can be placed in the evidence of the first witness Ashgur Moollah, and his evidence, I would reject; but though there are exaggerations in the evidence of the other witnesses, viz. as to their having seen Komarallee fire the gun, and having heard the dying man charge Komarallee with firing the gun by order of Toraballee, such exaggerations are the peculiar defects of all native evidence in this country. Witnesses try to prove too much, and the Court trying the case has either to select so much of the evidence as it believes, or to acquit the prisoner. Our Courts have followed the former practice. The latter course would lead to the acquittal of almost every man committed for trial. Rejecting therefore the exaggerations, there are no material contradictions to render the evidence altogether unworthy of credit as urged by the Counsel.

Many of the objections urged against the evidence, on which the petitioners have been convicted, are equally applicable to the evidence of witnesses Nos. 1 to 15, and the reasons for rejecting that evidence are set forth in the Sessions Judge's report on the trial.

As to the severity of the punishment, I think that a very severe example is necessary, for the affrays and riots in zillah Backergunge, in which fire-arms are used, are frequent. I see no sufficient reason to interfere with the sentence heretofore passed by the Court, and therefore reject the petition.

*Mr. H. V. Bayley.*—Mr. Goodeve for the applicants Toraballee and Kumrallee urges;

I. That the affirmative evidence on which the conviction rests, is that taken on the remand; and that such evidence is so defective as not to warrant a conviction.

II. That *in connection with this plea* must be considered the evidence of the witnesses Nos. 1 to 15, for the applicants, which is to the effect, that the premises of the applicants were attacked; and that they at once removed themselves from the locality of the disturbance, and made no riot.

III. That there is not made out that prominence, and leadership on the part of applicants which should warrant the

severe sentence passed ; and that no failure of the defence should have been allowed to go for the conviction.

On the *first* plea Counsel premises by urging that the witnesses whose evidence was taken on the remand, are interested parties, being themselves charged in the case. Counsel urges also that Ashgur, the first informant, and the brother of the deceased, speaks of having *heard* of the occurrence when he first gave his deposition at the police, and then speaks at the Sessions of having *seen* it. That the statement of this witness at the thannah differs also from his deposition at the Sessions, as to whether Oomedallee was present at the disturbance, or was hid in his room from fear ; and that this witness states that the deceased mentioned that Kumrallee had shot him by order of Toraballee, whereas the deceased said himself that he did not know who shot him ; further, that there is a discrepancy in the statement of this witness, and that of others as to whether the protection given to Zuheer or that to Zuheer's son, was the cause of quarrel. Counsel adds that Oomedallee is the relative of this witness, and would naturally influence him. In regard to Oomedallee's evidence, Counsel urges that the contradictory statements regarding his not leaving his room for fear, and his being present witnessing the occurrence, are such that his testimony must be expunged. The Counsel's objection to the evidence of Nymooddeen is, that he was mentioned only as a witness to the death of the deceased, whereas he testifies to the occurrence of the riot : further that this witness states that the Chowkeedar was told by the deceased, that Kumrallee had shot him by Toraballee's order, whereas the deceased stated he did not know who shot him. The objection taken by Counsel to the evidence of Amceroodeen as to the words which passed before the riot need not be noticed, as it was based on a mistranslation furnished to Counsel. Another objection was, that this witness first stated that he could not tell where Zuheer was at the time, and then that he had seen him on the premises of the applicants. The objection to the evidence of Shurfoola is, that at the *Sessions* he said *he saw* the gun fired, and the attack ; whereas at the thannah he said *he heard* the gun fired, and ran off. A further objection is, that this witness is a menial servant, ploughman, of Oomedallee. As to Reizoolah's evidence, Counsel urges that he was shewn to be indebted to applicants for costs in a lawsuit.

In respect to his *second* plea, Counsel urges that in the evidence of witnesses Nos. 1 to 15, there is only that unavoidable similarity which must be seen, when the same witnesses narrate the same prominent facts.

The Counsel refers to the opinion of the Magistrate, and of the Jury as to the prisoners not being the aggressors, but the party attacked. He adds that the portion of this Court's

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judgment, page 575 lines 12 to 18, is obviously incorrect as to there not being any other gun than that of Kumrallee in the village.

In regard to all these pleas, I must premise that in cases in this country it is necessary for the purposes of justice to accept so much of the testimony of a witness as the Court is quite satisfied is true, either from some internal evidence of its being so, or from its being supported otherwise, or from both. (Vide Nizamut Adawlut Reports Volume 7, Part II. page 672 and page 673. May 14th, 1857.) I must also observe that statements of witnesses at the thannah are not on oath. And it is on discrepancies between the *statements at the thannah*, and *depositions on oath at the Sessions*, that the Counsel has based his objections.

In respect to the witness Ashgur, we gave due allowance for the inconsistency on *his information on oath* at the thannah, and his deposition before the Sessions Judge. The remaining contradictions in the evidence are not such that from them I can bring myself to any conviction of the innocence of the applicants;—indeed some are easily to be reconciled, e. g. it is quite clear that Zuheer and his family were supposed to have sought the protection of Oomedallee, but it was Zuheer himself whom Toraballee detained. Again Nymoodeen might have been present at the riot, and yet the darogah have sent him as a witness to the special fact of the death of deceased; further Shurfoola might have been present, and yet only heard and not seen the gun fired, as it is not shewn that his attention was just then directed to the particular individual who fired it.

After a careful re-consideration of the whole case, and of the pleas of Counsel, I do not see any sufficient reason to discard the evidence of all the witnesses examined on the remand, and I think it sufficiently proved that *Toraballee and Kumrallee were prominently present and concerned, at a riot in which murder was committed*, which is the offence of which they have been convicted by us.

On the *second* plea, I still think the similarity referred to is one of the character stated in our former judgment. (Vide page 575 (at top) Volume 7, Part I.) and not of that contended for by Counsel.

On the *third* plea, it will suffice to observe that I have stated my opinion in my remarks on the first plea. I would add that it was pointed out to Counsel (who was pleading under a misapprehension on this point) that the remarks on the failure of the defence in page 575, lines 15 to 25 did not form the grounds of conviction, but were recorded, because in referred or appealed criminal cases in this Court, it is the practice not to leave unnoticed the pleas urged by a prisoner in his defence.

As to our remarks in lines 12 to 18 of page 575 we referred

to "these witnesses" as Nos. 1 to 15, whose evidence we distrusted. It would perhaps have been more correct to say, "no sufficient evidence" in lieu of "no evidence" in respect to the point of whether any other gun than Kumrallee's was in the village. The preponderance of that evidence on which we relied was to the effect that there was not any other. The gun found near Toraballee's and Kumrallee's cutcherry was identified as that of the latter, and the fact has only been used against him in this case to the extent of considering it proved as a collateral fact, that he had a gun; *not* as proof of his having fired the gun which killed the deceased.

In regard to the measure of punishment I have only to state that the Counsel is incorrect in his remarks that this is an ordinary dispute of the nature of a case of plunder. The frequency of these fatal affrays with

\* Toraballee in page 561, April 27th.

Kuleem Akhoond, page 780, June 15th.

Keamoodeen, July 14th.

guns, and deadly arms, in Backergunge, has been noticed in three cases to Government as coming before us within three months.\*

I see no reason to admit a review, and would reject the application.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

No. 90 OF 1857.

HAFEEZULLAH, PETITIONER AND OTHERS.  
BABOO KISHEN SUKHA MOOKERJEA, COUNSEL FOR  
PETITIONER.

CHARGE.—Riotous assemblage.

*Abstract grounds of appeal.*—1st, the order passed by the lower Courts is illegal, inasmuch as there is no Regulation in force which provides for demanding security when the charge is not satisfactorily proved. 2nd, it is evident from the Sessions Judge's *fyzullah* that this charge is brought in collusion with the indigo-planter Mr. Hampton. Hence the order of *moochulka* and security against us, is not legal and valid.

JUDGMENT.

The petitioner has been required to give recognizance and security to keep the peace under Act V. 1848. The Counsel pleads that the Magistrate could not require security to be given when no offence had been committed, and no trial had been held.

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Remarks on power to take recognizances and security under Act V. of 1848, and on such cases not being admissible in Summary special appeal to the N. A. under Section 2, Act XXXI. of 1841.

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Case of  
HAFEEZOOOL-  
LAH  
and others.

We find that the order of the Magistrate has been confirmed by the Sessions Judge, and this being an order passed in a case other than a criminal trial is not appealable to this Court under the provisions of Act XXXI. of 1841. Further, the provisions of Act V. of 1848, authorize a Magistrate to demand both recognizance and security, even though the party may not have been convicted of any specific offence. We reject the petition.

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REGULAR CASES.



SEPTEMBER,

1857.



REGULAR CASES.

SEPTEMBER, 1857.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

NEEMYE PODDAR (No. 10.\*) ODOYCHAND RESHEE  
(No. 11.\*) CHEDUM CHUNG (No. 12,) SHEIKH  
LACKHOO (No. 13.) SHEIKH RUMJAN (No. 14,)  
SHEIKH KADER (No. 15,) SHEIKH BAROO ALIAS  
BARKOO (No. 16,) AND TRILOCHUN BUNDOPADEA  
(No. 17.)

Dacca.

CRIME CHARGED.—Mutual affray attended with the wilful  
murder of Gopal Khalasee.

1857.

Committing Officer.—Mr. C. Jenkins, Officiating Magistrate  
of Dacca.

September 1.

Tried before Mr. J. E. S. Lillie, Sessions Judge of Dacca, on  
the 27th June, 1857.

Case of  
CHEDUM  
CHUNG and  
others.

*Remarks by the Sessions Judge.*—The witnesses,\* favorable  
to the first party, depose that  
Wit. No. 4, Sonah Kazee. Ramdhan Sirkar Ameen, Gopal  
" " 5, Sheikh Oozcer. and another Khalasee were em-  
" " 6, Rajkisto Chung. ployed in superintending the  
" " 7, Goorooopersad Deo. ploughing of some land, said to

Appeal re-  
jected. Pleas  
of Counsel as  
to rejection of  
whole evi-  
dence overrul-  
ed. Remarks  
on objection  
to Wise's ap-  
pearance, and  
on reasons not  
being given  
by Sessions  
Judge, for  
non-examina-  
tion of certain  
witnesses.

be always cultivated in indigo by the factory, in Jadoochur,  
situated to the east of the village of Himiyatpore, when an  
armed force, on the part of Meulvee Abdool Ally headed by pris-  
soner No. 17, and others, who have not been apprehended, came  
to the spot to stop the ploughing; and that on Gopal remon-  
strating, he was beaten with *lattes* and speared, from the effects  
of which he died. Witnesses, Nos. 6 and 7, mention the names  
of those who struck the blows.

The witnesses,† favorable to the second party, depose that an  
armed force on the part of the  
factory came and destroyed the  
crops of some of the riots of  
Himiyatpore; that they then  
attacked that village, plundered several houses, and snatched

† Wit. No. 16, Luckhun chow-  
keedar.

" " 17, Buhur Ally.

\* Acquitted by the Lower Court.

1857. ornaments from the persons of some females; and that Gopal and two other servants of Abdool Ally having remonstrated with the rioters, they were wounded and carried off on elephants.

September 1.

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(HUNG and  
others.

The Civil Surgeon has proved that Gopal was speared in the upper part of the chest, and that on tracing the wound he found that the lungs had been transfixed.

Defence of the prisoners. Prisoner No. 10, pleads an *alibi*,

\* Wit. No. 35, Goluck chowkeedar.

" " 36, Arjan chowkeedar.

" " 37, Ranjoo chowkeedar.

" " 39, Akbur burkundaz.

" " 40, Arradhun Singh.

† Wit. No. 46, Rakhally Reshee.

" " 47, Joynarain Reshee.

" " 48, Ramguttu Reshee.

‡ Wit. No. 52, Toolsee Singh, burkundaz.

" " 53, Kristo Kubeeraj.

" " 54, Rajnarain Burdhun.

" " 55, Sumbhoonath Ghose.

" " 62, Moolfut Beapary.

" " 63, Hurrymohun Shaw.

§ Wit. No. 71, Dinonath Toppadar.

" " 72, Kishen Coomar Majoomdar.

" " 73, Ramlochan Doss.

" " 78, Bulram Nundy.

" " 79, Bhyruchunder Doss.

and five witnesses\* depose to that effect. Prisoner No. 11, states that he was ill in his house and unable to move on the day in question, and three witnesses† support that statement. Prisoner No. 12, makes a similar defence, and six witnesses‡ support his statement. Prisoners Nos. 13, 14, 15 and 16, state that they ran away with their families when the village was attacked, and their statement is corroborated by their witnesses. Prisoner No. 17, pleads an *alibi*, and five witnesses§ depose to the truth of that plea.

The Law Officer acquits prisoners Nos. 10 and 11, and convicts the remaining prisoners of *affray* attended with *culpable homicide*.

I concur in the acquittal of the two prisoners. They were not named until several days had passed after the occurrence,

and the evidence against them is improbable and untrustworthy.

I differ from the Law Officer in regard to the degree of guilt of the remaining prisoners, and would convict them of *riot* attended with *wilful murder*. It is certainly very possible that an affray did occur; but I see no reason to disbelieve that the occurrence commenced in the manner described by the witnesses favorable to the first party, Ramdhan Sirkar Ameen lodged information before the Police on the day of the occurrence; and his statement tallies with that of those witnesses.

It will be observed that throughout the proceedings each party affirmed that Gopal was his servant. At the conclusion of the trial the second party produced an extract from a list of servants filed by Moulvee Wahid Ally, the son of Abdool Ally,

before the Deputy Magistrate of Manickgunge, in July, 1856, in which the name of Gopal occurs; but it is clear that a forgery has been committed. I have inspected the original list, and find that it consists of six separate sheets of paper. Three of those sheets bear the impression of the Deputy Magistrate's seal, and three do not. The sheet containing the name of Gopal is not sealed; and its appearance and the signature of the Deputy Magistrate's omlah upon it differ from those of the sealed sheets. Had the list been genuine, it would undoubtedly have been produced at an earlier stage of the proceedings. It is to be remarked moreover that in the first petition, presented to the Magistrate on the day of the occurrence by the second party, it is affirmed that two other persons were carried off on elephants, and Gopal's name is not mentioned. The brother\*  
 \* Wit. No. 31, Sheikh Dhunnye, and wife of Gopal have deposed  
 " " 32, Musst. Doolee. that he was in the employ of  
 the factory at the time he was  
 killed, and that he had never been in the employ of the other party. I have directed the Magistrate to enquire into the forgery.

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Case of  
 CHEDUM  
 CHUNG and  
 others.

The evidence of the witnesses to prove the *alibi* pleaded by prisoner No. 17, is extremely improbable, and it is at variance with the statement of Lukhun† chowkeedar, who gave information to the police on the part of the second party.

I would recommend that prisoner No. 17, be sentenced to ten (10) years' imprisonment with labor in irons in banishment; prisoner No. 12, who is shewn to have struck Gopal with a *lattee*, to seven (7) years, and the remainder to five (5) years' imprisonment with labor in irons.

I regret to be compelled to observe that the proceedings of the police have been most unsatisfactory. The thannah mohurrir reached the spot a very short time after the rioters had dispersed, and had he acted in good faith and with common diligence, the true facts of the case must have been elicited. The darogah and the other officer, specially deputed by the Magistrate to investigate, prepared a plausible report of the case; but they entirely failed to produce proof of the conclusions they had arrived at or to apprehend the principal culprit.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This case comes before us both as a referred, and as an appealed case. As a referred one, because the Law Officer convicts the prisoners as concerned in a *mutual affray* attended with murder; the Sessions Judge convicts them of *riot* attended with murder.

Baboo Anodapershad, for the prisoners, urges 1st, that his clients have been convicted on insufficient evidence; 2nd, that if guilty they can only be deemed guilty of *mutual affray*; and



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*not* of riot. These two pleas rest so entirely on the general evidence that it will be the best course to consider them in connection with that evidence.

Witnesses Nos. 1, 16, 17 and 18, depose to the case being one of forcible trespass on the lands of Moulvee Abdool Ally, and of plunder, on the part of Wise's people, and to Gopal the deceased being a servant of Moulvee Abdool Ally, and having been killed by Wise's people, and to two others of Abdool Ally's people being wounded by them; and to all three having been carried off by Wise's people on an elephant. Witnesses Nos. 4, 5, 6 and 7, depose to the people of Moulvee Abdool Ally having attacked the Ameen and a few people ploughing for Wise on the land of the latter, and to their having killed Gopal, a servant of Wise. The witnesses on both sides give this conflicting evidence, and this Court has only to determine how much of the whole is to be trusted; for we cannot subscribe to the doctrine urged by Counsel that where we distrust any, we must distrust the whole. This plea has been before overruled before. (V. Joyeperkas Sing's case, May 14th, Vol. 7, Part 1, page 657). We are disposed to disbelieve that part of the evidence of witnesses Nos. 1, 16, 17 and 18 in regard to Wise's people plundering the village of Himiyatpore in a band of three or four hundred armed men; for the testimony as to details is most vague and unsatisfactory. We are at the same time not disposed to credit the evidence of witnesses Nos. 4, 5, 6 and 7, as to the deceased, the Ameen, one other person, and two or three boys being *the only parties* concerned on the part of Wise; because the ability to take off deceased, (to secure whose body, when dead, would be an equal object to both parties, since they each claim him as their servant when alive,) contradicts such evidence.

The objections of Baboo Anodapershad as to the precise number of men deposed by witnesses Nos. 4, 5, 6 and 7 to have been struck with *lattee* blows, and his plea as to the distance, two hundred cubits, being too far to enable the witnesses to see and identify persons, do not affect the main matter in this conviction, viz. whether prisoners were or were not concerned in one or other of the offences found by the Law Officer, and Sessions Judge respectively.

On the whole, we think the evidence to their being so concerned is sufficient; but we think the circumstances of the case shew that there was a "*mutual affray*;" and of that we convict the prisoners.

Baboo Anodapershad has urged that in this view the measure of punishment should be reduced. We do not concur in this. The fact of a conviction of *mutual affray* by criminating two opposite parties does not exculpate one of them. The pleader's view that the term implies that one party was the aggressor is not necessarily correct, nor is it at all proved in this case that

his clients were not the aggressors, though we are not prepared to say that it is proved that they were so. In fact we are satisfied that the prisoners were engaged in a *mutual affray*, attended with murder. There is no proof that for self-preservation of prisoners such *mutual affray* was absolutely necessary, and this is the only exculpatory plea the law recognises; or this Court can adopt.

Looking to the frequency of affrays in Eastern Bengal, and to the necessity of severe punishment with a view to endeavor to prevent them, we decline to interfere with the measure of punishment.

We reject the appeal.

We have to add that Mr. Allan was about to address the Court for Wise, when Mr. Fagan objected, on the ground that Wise was not a party as prosecutor or prisoner. We admitted the objection, as under such circumstances Wise himself could not personally have pleaded; as too his interests were those connected with his civil rights; and as the offence was one properly coming before the Courts by a public prosecution.

We have to notice to the Sessions Judge that many witnesses both for the prosecution and the defence do not appear to have been examined by him. In such cases he should distinctly place on his record the reasons why each witness entered in the Calendar was not examined.

1857.

September 1.

Case of  
CHEDUM  
CHUNG and  
others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND GUNNOO TEWARY

*versus*

RADHAY KAHAR.

Sarun.

1857.

CRIME CHARGED.—Being an accomplice in knowingly uttering a forged document, *tumasook*.

CRIME ESTABLISHED.—As crime charged.

Committing Officer.—Mr. W. F. McDonell, Magistrate of Sarun.

Tried before Mr. G. L. Martin, Officiating Sessions Judge of Sarun, on the 25th March, 1857.

*Remarks by the Officiating Scssions Judge.*—For particulars of this case read the following remarks recorded on the trial of Nursing Pandey and others, in the Calendar No. 2, for July, 1854.

September 2.

Case of  
RADHAY  
KAHAR.

Prisoner's appeal rejected; the conviction being good on the prosecution of the aggrieved parties.

1857.

September 2.

Case of  
RADHAY  
KAHAR.

"This is a case of unsuccessful attempt to register a forged bond. On the morning of the 15th June, the defendants, seven in number, went to the Registry Office with the bond delivered with a petition to the Register, Doctor Fleming, by defendants Nos. 2 and 3, says the Registry Moonshee, the other witnesses, two chupprassees, being unable to state who presented it. According to this document, Dahree defendant No. 4, had advanced 95 Rupees to Gunnoo and Jugput represented by defendants Nos. 2 and 3, Nursing and Amee, identified by defendant No. 5, who was examined under Act V. of 1840. The defendants Nos. 2 and 3, stated that they had executed the deed and received the money, but when asked if they could write they admitted they could not. This excited suspicion as the bond was signed by Gunnoo for himself and Jugput. Dahree defendant No. 4, then stated in answer to a question put to him that Jugput had signed the bond and on this, defendants Nos. 5, 6 and 8, seeing that the fraud was discovered, ran away from the office, but were pursued by the chupprassees, brought back again and were then sent by the Register to me as Civil Judge and afterwards made over by me under Act I. of 1848, to the Magistrate, by whom they have been committed for trial. Defendants Nos. 6, 7 and 8, were not questioned at the Registry Office, but went with the rest to have the deed registered and were thus accomplices in uttering the deed, and that the bond is a forged document cannot, for a moment, be doubted, for the two parties, in whose name the deed is executed, were at the station on the morning in question and attended at my office shortly after the defendants reached it. These live in the town of Chuprah close to Gungapershad, defendant No. 8, and between the two families, there have been feuds for the last three generations and this is the way in which Gungapershad has attempted to pay them off, for there is no doubt that he is at the bottom of the plot. Had Gunnoo and Jugput actually borrowed the money of Dahree, they would have attended themselves at the Registry Office, there being no possible reason why, being at the station, they should send two others to personate them. Of the defendants, Nursing, No. 2, admits having played his part at the instigation of Gungapershad, defendant No. 8; defendant No. 3 has no defence to offer in my Court, that first of all made being that he and Nursing had personated Gunnoo and Jugput at their own request as they said they had no time on the morning in question to attend at the Registry Office. Defendant No. 4, says he advanced the money to Gunnoo and Jugput, but he admits that the bond was not written at the time and says that he went to the Registry Office, with defendants Nos. 2 and 3, who undertook to personate Gunnoo and Jugput, Rada identifying them and defendant No. 7, also accompanying them. Defendant No. 5,

says he became a witness to the bond at the request of Gunnoo, who said he had received the money from Dahree and he admits having identified defendants Nos. 2 and 3, as Gunnoo and Jugput by Gunnoo's desire. Defendant No. 6, admits having written the bond produced in Court, but says the money was not paid before him and that the following morning he met Gungapershad on the road near the Register's, when he was seized by the chupprassees and taken to the office where he discovered, not Gunnoo and Jugput who had really borrowed the money, but defendants Nos. 2 and 3, who had personated them. This defendant has no witness to call in defence; defendant No. 7, Ganda, says he became witness to the bond at the request of Gunnoo and Jugput, who said they had got the money and that next morning two men called at his house when he was absent and left directions for him to go to the Register's, which he accordingly did, and there to his surprise found not the two who had borrowed the money, but defendants Nos. 2 and 3, who had come instead. The defence of Gungapershad is, that he happened to be on the road opposite the Register's house when he saw Rada No. 5, followed by the chupprassees, and that on his asking what was the matter, he was himself seized and carried to the Register. This account is supported by the evidence of eight witnesses, but no reliance whatever can be placed on their testimony, as Gungapershad declines examining the Register himself, whom I offered to send for, if he wished it. Had he not gone with the party, the Register would not have committed him. The witnesses may have seen him seized by the chupprassees, for he was caught by them after he had run away from the office with Rada and Bhowanydial, but their statement that he was seized in consequence of enquiring about Rada is manifestly false. The Moul-vee holds the bond to be a forged document and that the defendants are all guilty of being accomplices in the crime of knowingly uttering the forged bond. Rada No. 5, is also separately charged and convicted of perjury, and his sentence of seven years' imprisonment with labor in irons is recorded in that case. The prisoners are sentenced as above. Ganda being imprisoned for five years as he is an elderly man. In every case of this sort, the severest punishment is absolutely necessary, for the crime established in this case is one of the greatest that can be committed against society. Men may protect themselves against open violence, but it is hardly possible to guard against villains who prepare forged documents and then make the Judges, of the land their instruments of oppression. There can be no doubt, for the particulars detailed by Gunnoo and Jugput, but that Gungapershad has sought to punish them, his enemies, by forging a bond in their names, and had he been a little more careful, he might have succeeded. Not one case in

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September 2.

Case of  
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KAHAR.

one thousand, I believe, of this sort is successfully prosecuted and it is proper that when conviction does ensue, the punishment should be calculated to deter others from the crime."

The majority of the Judges of the Nizamut Court differed with the zillah Judge and held that the plaintiffs should have been left to prosecute their case themselves. The prisoners were accordingly released. On the plaintiffs prosecuting, all the defendants, with the exception of Bhowanydial absconded. Particulars of his commitment, trial and sentence are thus given in trial No. 2, of January, 1855.

"This case will be understood from the following remarks recorded on the trial of this and other prisoners sentenced on the 24th July last, the prisoner being then No. 6.

(Copy of the remarks has been given above.)

"On the former occasion, I considered that Construction 611, and Act I. of 1848, justified the proceedings taken by me, but as the majority of the Court held that the plaintiffs should have been left to prosecute their case themselves, the prisoners were released. Being prosecuted before the Magistrate, all, with the exception of the prisoner and another now dead, ran away. The prisoner being secured has been committed and the Mouleevee agrees with me in considering that the deed is clearly forged and the prisoner guilty as charged, and he is accordingly sentenced as noted above."

The prisoner now before the Court was apprehended in the 24-Pergunnahs in November last. The evidence produced on the former trial proves that the deed is a forgery, and the witnesses Nos. 1, 2 and 3, identify the prisoner as one of the persons who appeared before the Register as a witness in the forged deed. The prisoner declines offering any defence.

The Law Officer agrees with me in convicting the prisoner of being an accomplice in knowingly uttering a forged document, and he has accordingly been sentenced as below.

*Sentence passed by the lower Court.*—To be imprisoned with labor for seven years from which is to be deducted three months and eighteen days undergone under first conviction, thus making six years eight months and twelve days.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) This prisoner was a witness to the deed alleged to be forged, and is convicted now of uttering it, knowing it to be forged. He was convicted by the Sessions Judge of being an accomplice in uttering a forged deed. That case was tried by the Sessions Judge in Calendar No. 2, of January, 1854. The Nizamut Adawlut in a full bench quashed the conviction in regard to all the prisoners, because the parties aggrieved had not prosecuted. (Vide Nizamut Adawlut Reports, Volume 4, Part 2, 3rd November, 1854, page 533.) But it was recorded in regard to this prisoner that his sentence would be

found in the next case. That case is in page 539. He was there charged with perjury, and acquitted by the Nizamut Adawlut, as the Magistrate could not originate a charge of perjury. The aggrieved parties have now prosecuted for the forgery; and the prisoner is convicted of being an accomplice in knowingly uttering a forged deed. The evidence for the prosecution appears to us to have been quite sufficient to warrant the conviction, and the prisoner substantiated no defence which could refute that evidence. He now appeals, urging that he has been once tried and acquitted by this Court, and that therefore his conviction is illegal; that he was not aware of the prosecution; that the Sessions Judge effected it; and did not hear his defence. The record contradicts the three last pleas. On the first, it will suffice to say that the Nizamut Adawlut quashed the proceedings, as incomplete, owing to the aggrieved parties not having prosecuted; but in doing so, they stated that the aggrieved parties might prosecute. This has now been done; and renders the conviction legal. We reject the appeal.

1857.  
September 2.

CASE OF  
RADHAY  
KAHAR.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT, &c.

*versus*

GEEREEDHUR GHOSE AND LOKENATH JOGEE.

CHARGE.—Failing to furnish a security of 500 Rs. each for good conduct.

Nuddea.

With reference to a petition presented by the above prisoners, forwarded by the Sessions Judge of Nuddea, the *following Resolution*, No. 636, 19th August, 1857, was recorded by the Nizamut Adawlut.

1857.

September 3.

CASE OF  
GEEREEDHUR  
GHOSE  
and another.

The Court observe that both prisoners appeal against a conviction under Section 9, Regulation VIII. of 1818, and Regulation III. of 1819. But they urge no grounds for the appeal, nor for the reversal of the Sessions Judge's order, passed on the Deputy Magistrate's recommendation. These orders do not contain, (as they should do,) the reasons for the Sessions Judge's order, beyond the mere statement that they are based on a perusal of the record. The Sessions Judge should have stated his reasons more fully. The Deputy Magistrate only refers to the Magistrate's proceeding of the 9th January, 1857, as the basis of his recommendation. There are two proceedings of that date;—the one refers to a question of rewarding the district police for the capture of certain dacoits at the instance of the Commis-

Prisoners released, as their cases did not come within Section 9, Regulation VIII. of 1818.

1857.

September 3.

Case of  
GEEREEDHUR  
GHOSE  
and another.

sioner for the suppression of Dacoity; the other to the Commissioner noticing this appellant and others as having been mentioned in his office as participating in many dacoities.

Having read all the evidence on the record, (of which a distinct abstract should have been submitted by the Magistrate to the Sessions Judge, and referred to by the Sessions Judge in his final proceeding,) the Court are not satisfied that the case of the two prisoners, appellants, comes within the intent of the laws cited. There is no return of previous conviction with the record. Three witnesses merely say that Lokenath is a bad character, and as many witnesses say the same of Geereedhur. There is nothing to shew that the case of the appellants comes under the special provisions of Section 2, Regulation III. of 1819, or Section 9, Regulation VIII. of 1819.

The Sessions Judge is requested to forward a return of the previous convictions of the prisoners, within one week of this order reaching him; and the attention of the Magistrate and Sessions Judge is requested to these remarks in regard to future cases.

*In reply to the above Resolution*, the following letter was submitted by the Officiating Sessions Judge of Nuddea No. 150, dated the 26th August, 1857.

With reference to the concluding paragraph of the Resolution of the Court, under date the 19th instant, No. 636, I have the honor to forward two returns of the previous convictions of the prisoners, Geereedhur Ghose and Lokenath Jogee, drawn out from the vernacular Report of the Foujdary Record-keeper, received from the Magistrate of this district.

With reference to the above, the *following order* was passed by the Nizamut Adawlut.—(Present: Mr. H. V. Bayley.) The Court, having perused the above letter and its enclosures, does not consider the case of Geereedhur Ghose, against whom *no previous conviction* is recorded, as at all coming within the law under Section 9, Regulation VIII. of 1818.

In the case of Lokenath Jogee it appears that he was *convicted*, and imprisoned in the 3rd and 4th cases of the English return, for cattle-stealing, both in March 1849. In the 9th case he was, in January, 1855, *sentenced* to one year's imprisonment, being unable to give security, and is now proceeded against under Section 9, Regulation VIII. of 1818. I do not consider the evidence sufficient to justify the application of that Section to the prisoner.

I reverse the Judge's order.

PRESENT :

H. T. RAIKES, Esq., A. SCONCE, Esq. AND J. S. TORRENS, Esq., *Judges.*

GOVERNMENT

*versus*

KHODABUXSH.

Mymensingh.

**CRIME CHARGED.**—Perjury, in having on the 19th February, 1857, deposed, under a solemn declaration taken instead of an oath, before the Magistrate of Mymensingh, that he was not related to Azmut ; such statement being false and having been intentionally and deliberately made on a point material to the issue of the case.

1857.

September 5.

Case of  
KHODA-  
BUXSH.

**CRIME ESTABLISHED.**—Perjury.

**Committing Officer.**—Mr. C. E. Lance, Magistrate of Mymensingh.

Prisoner ac-  
quitted of wil-  
ful perjury,  
the majority  
of the Court  
considering  
the facts of  
the case not  
to prove the  
charge.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 9th May, 1857.

**Remarks by the Sessions Judge.**—The prisoner is charged with having committed wilful and deliberate perjury. It appears that the prisoner was cited by one Azmut as a witness to his defence in a case pending before the Magistrate, and that his evidence might be considered very trustworthy, he deposed before that officer that he bore no relationship to Azmut, which statement being proved to be false, he was committed to take his trial in this Court on a charge of perjury.

In his answer before the Magistrate, the prisoner admitted that he was brother-in-law to Azmut, but pleaded that no question was put to him regarding the relationship ; that he was merely asked whether he had any connection with Azmut, which he understood to be whether he was a ryot of Azmut or indebted to him, and he accordingly denied that he was either indebted to him or that he was his ryot ; that he married Azmut's sister, who has now been dead these last fifteen or sixteen years. In this Court he made the same defence, but declined to examine any witnesses.

I am of opinion that the charge has been fully brought home to the prisoner on the evidence adduced in the case. I observe from a perusal of the prisoner's deposition before the Magistrate, that the question of relationship with Azmut was clearly put to him and witness No. 7, a mohurrir of the Magistrate's Court, who took down the prisoner's deposition before the Magistrate, deposed before me on oath, that the prisoner's deposition was taken down just as the prisoner stated before him, and that the usual form of oath was duly administered ; further witnesses Nos.



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Case of  
KHODA-  
BUXSH.

2, 3, 4, 5 and 6, prove that the prisoner is brother-in-law to Azmut, which he himself now admits. Considering on these grounds that the prisoner has wilfully committed perjury with a view to pervert the ends of justice, I convict him of the same in concurrence with the verdict of the Law Officer, and sentence him to (3) three years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. H. T. Raikes, A. Sconce and J. S. Torrens.)

*Mr. A. Sconce.*—The perjury charged in this case consists in this, viz. that the prisoner when examined as a witness in a case of misdemeanour, said that "he was not related to Azmut," one of the defendants. Proof is now given that the prisoner, Khodabuxsh, is a brother-in-law of Azmut, and upon proof of that fact he has been convicted of perjury.

I observe that in the original deposition of Khodabuxsh, (dated 19th February, 1857,) he was asked whether he knew the defendants, Ramdoollub and Azmut, and had any connexion (*illaka sumpurko* are the words) with them or not? and that in his answer he said he knew them and had no connexion with either of them. I am not satisfied that, taking the question and answer together, we should find that degree of purposed falsehood which constitutes the crime of perjury. The question, it seems to me, was carelessly put, and as a mere form. One of the defendants was a Hindoo and the other a Muhammadan: the witness himself, Khodabuxsh, was a Muhammadan, and he might well think that the question was indifferent which asked him whether he had any connexion with a Hindoo. He was not asked whether Azmut was his brother-in-law or not; and I think that the denial made by him, under the circumstances above described, does not constitute perjury. I would acquit the prisoner.

*Mr. J. S. Torrens.*—I agree with the finding of the Judge and his Law Officer that the prisoner is guilty of the crime of perjury. He was summoned, as the witness named by Azmut, to clear him of the crime with which the latter stood charged. He very deliberately replied to the question put to him, that he had no connexion with Azmut, or the other person, whose name was also included in the query. The mere circumstance of the two names being included in the question did not, I think, give rise to any confusion which could have embarrassed the witness, now prisoner in this case; and his deposition, as the record is before us, was distinct and deliberate. He states he had no connexion with the accused; and, after the answer to the question is recorded, he goes on to swear that he knew him, Azmut, not to be guilty of the charge; and that he was engaged with him, prisoner, elsewhere at the time the crime was stated to have been committed. Had his want of relationship been established, his evidence, it is clear, he considered, would have had more weight

with the Court ; and I cannot see that he did otherwise than depose falsely and deliberately on the point which was at issue in the case in which he was being examined. I would therefore confirm the sentence passed.

*Mr. H. T. Raikes.*—I agree with Mr. Sconce that the question was too loosely put, to admit of the answer, as given, being made use of to ground a conviction of perjury.

The prisoner pleads that he did not understand it, as referring to any relationship or family-connection between himself and either of the accused, but as to the existence of any pecuniary obligation or dependent position on his part towards either of them ; that he consequently told no wilful or deliberate falsehood in his answer.

The only ground taken for assuming the contrary is, that the prisoner was called to prove an *alibi* for one of the accused, and believed that less credence would be given to his statement if he acknowledged the real connection between them.

There is nothing, however, in the deposition itself, which could in any respect be affected by the knowledge of a family-connection existing between the prisoner and the accused ; he might have accompanied the other, as he stated, just the same whether connected with him or not. The presumption then, that he wished to impose upon the Court rests simply upon the fact that he did not disclose such connexion in answer to the indefinite question put to him ; that question, so put, being intended it is said to elicit from him spontaneously all such information. Under these circumstances there is, I think, some reason to doubt that the prisoner intended to mislead the Court by a wilful and deliberate falsehood ; while there is much reason to believe that if the question of his being Azmut's brother-in-law had been directly put to him, he would have answered it truly. The prisoner is, at least, in my opinion, entitled to the benefit of the doubt which the omission to ask the question so directly raises in his favor ; and I therefore concur in his acquittal.

1857.

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September 5.

Case of  
KHODA-  
BUXSH.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND ANOTHER

*versus*RAMA DOME (No. 3,) CHUKOO NYA (No. 4,) BIR-  
BUL DOME (No. 5,) TILKA NYA (No. 6,) BUBOOA  
NYA (No. 7,) DHURUM NYA (No. 8,) DIGUM ROY  
(No. 9,) BOODHOO ROY (No. 10,) AND HORIL SING  
(No. 11.)

Bhaugulpore.

1857.

September 7. **CRIME CHARGED.**—Nos. 3, 4, 5, 9 and 10, 1st count, dacoity attended with arson and assault, and plunder of property valued at Rs. 13-9-9; 2nd count, receiving and possessing plundered property knowing at the time of receiving it, that it had been obtained by dacoity and plunder attended with arson and assault; 3rd count, having belonged to a gang of dacoits within the meaning of Act XXIV. of 1843. Prisoners Nos. 6, 7, 8, and 11, 1st count, dacoity attended with arson and assault and plunder of property to the above value; 2nd count, having belonged to a gang of dacoits within the meaning of Act XXIV. of 1843.

Case of  
RAMA DOME  
and others.Six prison-  
ers convicted;  
three acquit-  
ted. Remarks  
on the pro-  
ceedings of the  
police, as to  
identification  
of prisoners,  
and property.

**CRIME ESTABLISHED.**—Prisoners Nos. 3 to 11, dacoity attended with arson and assault and plunder of property valued at Rs. 13-9-9.

**Committing Officer.**—Mr. S. Lushington, Officiating Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 6th March, 1857.

*Remarks by the Sessions Judge.*—During night of 24th December last, a band of dacoits attacked and broke into the prosecutor's house. They were opposed by prosecutor's eldest son, when he, as well as his father, got severely beaten as shewn by their persons. After plundering the house of what it contained and setting it on fire, the dacoits made off, without any one of them having been recognised by name.

The police commenced their enquiries by collecting the suspicious characters of the neighbourhood from amongst whom the three eye-witnesses picked out the prisoners Nos. 3 to 11, as those whom they had recognised by person amongst the dacoits in the glare of light caused by the fire. The pri-

Mahomed Taj Allee Khan, Act-  
ing Darogah, Witness No. 8.

Wit. No. 1, Seebun Muhra,  
" " 2, Babu Khurbur,  
" " 3, Mohun Matau.

soners Digum Roy No. 9, Boodhoo No. 10, and Horil Sing No. 11 were described as the most active and the leaders of the dacoits.

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September 7.

Case of  
RAMA DOME  
and others.

Rama prisoner No. 3, Chukoo prisoner No. 4, Birbul prisoner No. 5, Tilka prisoner No. 6, Bubooa prisoner No. 7, and Dhurum prisoner No. 8, each successively confessed to having been at the planning, duly carried out "*selon la regle*," and at the commission of the dacoity. They also named prisoners Nos. 9, 10 and 11 as their leaders. Prisoners Nos. 9, 10 and 11 have always set up denials without attempting to account for their being accused except before the Court, when No. 9 urged, it was because he was unable to bribe the Police, No. 10, because he refused to confess, and No. 11 because he was apprehended on bare suspicion. Certain portions of the plundered property were found during search of the prisoners' houses which the confessing prisoners duly acknowledged before the Magistrate, whilst nothing but salt was found in Nos. 9's and 10's. All the confessing prisoners revoked before this Court without setting up any particular defence or calling any witnesses except to character. None of them appear to have been previously convicted but prisoners Nos. 9, 10 and 11's personal appearance and bearing would mark them out as the leaders. There was nothing aggravated in the offence beyond the violence used and setting prosecutor's house on fire, which most probably originated in the resistance set up by the prosecutor's son, and in the disappointment at the trifling value of the plundered property. However, according to the confessions, the dacoity was most systematically carried out. I accordingly convict the prisoners of the dacoity and have sentenced them as below.

*Sentence passed by the lower court.*—Prisoners Nos. 3 to 8 each to five years' imprisonment with labor and irons.

Prisoners Nos. 9 to 11 each to seven years' imprisonment with labor and irons in banishment to another zillah

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners Nos. 3 to 11, are said in the Sessions Judge's report of the case, to have been pointed out by the witnesses Nos. 1, 2 and 3, from a number of suspicious characters collected together by the Darogah, and identified by those witnesses as being concerned in the dacoity. The prisoners Nos. 3 to 8, confessed to the Darogah, and to the Law Officer; and certain portions of property were found in their houses, and some salt mixed with turmeric was taken from the houses of prisoners Nos. 9 and 10, which property the prosecutor alleges to be his.

On a perusal by the evidence given by the witnesses Nos. 1, 2 and 3, and by the Darogah, witness No. 8, we do not find the Sessions Judge's statement borne out by the record. The witnesses say that by the light of the fire they recognised four of

1857. the dacoits who pelted them with stones, and though they did not know them and had never seen them before, they could identify them; but only *after* the prisoners had been apprehended, and their defence taken, do those witnesses appear to have picked out the prisoners Nos. 3, 9, 10 and 11. The proof of this is that the prisoners were apprehended and their defence taken by the Darogah as follows:—No. 3 on 29th December, and Nos. 9, 10 and 11, on 30th and 31st December, and the statement of the witnesses identifying the prisoners was *not* written *till* 31st December; nor does it appear from the Darogah's report that he took any steps for the identification of the prisoners by the witnesses from amongst a number, or otherwise, *before* he took down their examination. In his deposition before the Sessions Judge, the Darogah, witness No. 8, says that having collected the people from the village of Nakoo, and another village, Rama Dome confessed, and so gave a clue which led to the discovery of the robbers; but it does not, in the first place, clearly appear what led to Rama Dome's apprehension; further, this statement is contradicted by the Darogah's report of 30th December, which shews the prisoners Nos. 3, 4, 5 and 6, *had been* apprehended by the Jemadar, and their houses searched, and some of the property recovered, and they were *then* taken to the Darogah. Thus, either these prisoners had been previously charged with the crime, of which there is no proof, and no probability, as none of the witnesses knew their names, nor accompanied the Jemadar; or that officer's proceedings were altogether unwarranted and illegal. We think that under these circumstances little trust can be put upon the evidence to the identification of the prisoners or the property. We have observed that the identification of the prisoners by the witnesses took place apparently *after* their defence had been recorded; and though the prosecutor on the trial deposed to having recognised the prisoners Nos. 3, 9, 10 and 11, and no others, yet from the darogah's report of 29th December, it appears that he pointed out Manikchund, Chundoo Chamar, Kanwaye, Nunkoo, Jeetun and Manaye as engaged in the robbery; but against these persons there was no other evidence, and their names are never again alluded to before the Magistrate or at the Sessions trial. It must be remembered also that the witnesses admit before the Sessions Judge that they were not previously acquainted with the prisoners, though to the Darogah they are represented to have asserted they had seen them frequently, an assertion they deny ever having made. As to the identification of the property, we find that *after* the houses of the prisoners had been searched and certain articles of property produced, the prosecutor filed a *supplementary* list of property in which, with the Darogah's permission, he included those several articles. Under the above circumstances, we consider the evidence

September 7.

Case of  
RAMA DOME  
and others.

as to the identification of persons and property of doubtful credit; and as there is in consequence no evidence to convict the prisoners Nos. 9, 10 and 11, they must be acquitted. The other prisoners confessed to the Darogah and the Magistrate, and though they revoke these confessions before the Sessions Judge, they do not complain of having been compelled to make them, or of having suffered from any ill-usage. These confessions give a detailed and consistent account of their proceedings; and we do not find any sufficient reason to reject them as extorted, or otherwise unworthy of credit; nor have these prisoners in their appeal urged any reasons for impugning the propriety of the conviction on this, or other grounds. We therefore reject the petition of the prisoners Nos. 3, 4, 5, 6, 7 and 8, and direct that the prisoners Nos. 9, 10 and 11, be released.

The proceedings of the police in the case have been very defective, if no more. The Sessions Judge will furnish the Commissioner of the Division with a copy of these Remarks.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT AND GOPAL CHUNG

*versus*

JUGUTRAM CHUNG (No. 1.) BANOO FUQUEER (No. 2.) DOOLLUBH CHUNG (No. 3.) AND NITIE CHUNG (No. 4.)

Sylhet.

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CRIME CHARGED.—1st count Nos. 1 and 2, culpable homicide of Khunjun Chundalnee by administering and causing to be administered medicine for procuring abortion; 2nd count, Nos. 3 and 4, being accessaries after the fact contained in the above count.

Case of  
JUGUTRAM  
CHUNG and  
others.

CRIME ESTABLISHED.—No. 1, culpable homicide; No. 2, being an accomplice in culpable homicide; Nos. 3 and 4, being accessaries after the fact in the culpable homicide.

Prisoners  
released; the  
circumstances  
of the case  
not supporting  
the conviction.  
Remarks on the  
examination  
of witnesses,  
the absence of  
medical testi-  
mony, and the  
proceedings of  
the police.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Sylhet.

Tried before Mr. M. Shawe, Officiating Sessions Judge of Sylhet, on the 25th November, 1856.

Remarks by the Officiating Sessions Judge.—The prisoner Jugut Chung, was intimate with the deceased in consequence of which she became pregnant, and when she was two months gone with child, the prisoner No. 1, went to prisoner No. 2, from whom he procured some medicine, and which he administer-

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Case of  
RAMA DOMB  
and others.

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ed to Mussumut Khunjun Chundalnee to produce abortion, from the effects of which she died, prisoners Nos. 2 and 3, knowing that the deceased died an unnatural death, burned her corpse, and concealed the fact. The charge against all the prisoners has been proved by their own confessions both before the police and the Magistrate, as well as by the evidence of the eye-witness No. 1, and by the circumstantial evidence; the confessions of the prisoners have been duly attested by the subscribing witnesses thereto.

The assessors convict prisoners Nos. 1 and 2 of culpable homicide, and Nos. 3 and 4, of being accessaries after the fact. I concur in their verdict, as regards prisoners Nos. 1, 3 and 4, but not in respect to prisoner No. 2, whom I convict of being an accomplice in the culpable homicide, and sentence all the prisoners as specified below.

*Sentence passed by the lower Court.*—No. 1, to be imprisoned for five (5) years with labor in irons. No. 2, to be imprisoned without irons for four (4) years and to pay a fine of 40 Rs. on or before the 5th December, 1856, or in default of payment to labor until the fine be paid or the term of his sentence expire. Nos. 3 and 4, to be imprisoned without irons for two (2) years and to pay a fine of 30 Rs. on or before the 5th December, 1856, or in default of payment to labor until the fine be paid or the term of their sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The grounds of appeal are stated in the correspondence at foot.\* The occurrence took place on

\* No. 575.

*Resolution of the Presidency Court of Nizamut Adawlut, under date the 23rd July, 1857.*

Read a letter, No. 9, dated 7th February last, from the Officiating Sessions Judge of Sylhet, submitting a petition from Juggutram Chung and two others, appealing against his orders of the 25th November, 1856.

*Present:*  
G. LOCH and H. V. BAYLEY,  
Esqs., Officiating Judges.

The Court observe that the appellants in this case state in their petition of appeal, that the Acting Darogah of Jynteeapore, Premnarayan, about ten or twelve years ago, got up several similar cases to the great suffering and injury of the people. The present trial is the fourth or fifth case of homicide, caused by taking medicine to procure abortion, sent up by the abovenamed Darogah, which has come before this Court; and referring to those cases, and the Statement called for by the remarks of this Court of the 27th April, 1857, and sent accordingly by the Sessions Judge on the 3rd June, the Court, before passing final orders on this appeal, request the Sessions Judge will ascertain through the Magistrate, whether the Darogah, Premnarayan, did, as alleged by the appellants, get up similar cases some time ago; how long the said Darogah has been in Government employ, and whether he has been continuously in employ, or has ever been removed or suspended, and if so why, and

the 11th September, 1856. The first information was given on the 26th October by witness No. 16, the chowkeedar of the village where the prisoners resided. That information is of a most vague and doubtful character, and is more suggestive that rumours prevailed of the deceased having died of means taken

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how he has been lately employed. The Sessions Judge is requested to submit this information with as little delay as possible.

ORDERED

That a copy of this Resolution be forwarded to the Officiating Sessions Judge for his information and guidance.

(Signed) A. W. RUSSELL, *Register*.

No. 47.

*To the Register of the Court of Sudder Nizamut Adawlut.*

*Fort William.*

SIR,—With reference to the Court's Resolution No. 575, of the 23rd ultimo, I have the honor to forward in original a letter No. 330, of the 6th instant, to my address from the Magistrate, giving the information required by the Court regarding Premnarayan Deb, the acting Darogah of thannah Jynteeapore, whose proceedings in most of the cases investigated by him, I considered very unsatisfactory.

I have, &c.

(Signed) M. SHAW, *Sessions Judge*.

*Court of Sessions, Zillah Sylhet,*  
*The 8th August, 1857.*

No. 330.

*To the Sessions Judge of Sylhet.*

*Foujdary Court, Zillah Sylhet,*  
*The 6th August, 1857.*

SIR,—With reference to the Resolution of the Court No. 575, of the 23rd July, and your letter No. 40, of the 3rd August, I have the honor to report for the information of the Court of Nizamut Adawlut as follows.

Seeing that Premnarayan Deb, was only appointed as an acting Mohurrir in the year 1850, it is utterly impossible that as stated he "about ten or twelve years ago, got up several similar cases to the great suffering and injury of the people."

2nd. Premnarayan has been in Government employ *uninterruptedly* since the year 1850, and has never been removed or suspended for any cause whatever. He has acted as Darogah of various thannahs during my Magistracy and has always given every satisfaction. He is now acting Darogah of thannah Bangow, where, on a former occasion in the year 1854, he highly distinguished himself in the investigation of the murder of Shumshere Cazy, in which Fyzebux was transported for life beyond the seas and others were sentenced to various terms of imprisonment. The case is in the Nizamut Adawlut's Reports for the month of August, 1854. I would observe that in your list of defendants sent to the Nizamut, the name of Juggutram Chung does not appear.

I have, &c.

T. P. LARKINS, *Magistrate*.



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to procure abortion, than distinct as to any facts in support of those rumours. No explanation is to be found throughout the record of the cause of delay in the chowkeedar giving information, while it is in evidence that the chowkeedar was present at or about the time of the death, and at the disposal of the corpse. The chowkeedar also refers to the Zemindar's interference, of which nothing appears elsewhere on the record. This witness, in his first information, mentions seven other persons, and prisoner No. 1, as the parties engaged in the disposal of the body of the deceased. These seven are never before the Court again, and prisoners Nos. 2, 3 and 4, who were *never* mentioned by the chowkeedar, are convicted. A careful perusal of the evidence for the prosecution shews that all is hearsay, except the deposition of Musst. Rupee, and that is unsatisfactory and indistinct, as to the root applied being one used to procure abortion, or its application having really caused that result. Owing to the utter absence of medical testimony, all that remains to sustain the conviction is, the fact that the prisoners confessed before the Police and Magistrate. They repudiated those confessions before the Sessions Judge, and with reference to all the circumstances before stated in these Remarks, we consider it unsafe to convict solely upon the confessions in question. We therefore reverse the order of the Sessions Judge, and direct that the prisoners be immediately released.

We have to observe that the examination of the witnesses has been very superficially conducted. In all cases of this nature, medical evidence should be secured where procurable, though in the present instance, owing to the early disposal of the body and the neglect of duty on the part of the chowkeedar, this was impossible. The evidence usually taken in these cases is in general so vague that little credit can be attached to it unless supported by medical testimony, but the Magistrate should use his best endeavours to obtain more reliable proceedings on the part of the police.

A copy of these Remarks is to be sent to the Commissioner of the Division for his information and such orders as he may deem necessary.

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PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

SHEIKH GOONYE (No. 1,) SHEIKH ARADHUN (No. 2,) SHEIKH NEEZAMUDDI KAREEGUR (No. 3,) SHEIKH MUNTEERUDDI (No. 4,) SHEIKH ABBAS (No. 5,) SHEIKH TALLEBUR (No. 6,) SHEIKH HAZAREE (No. 7,) SHEIKH AMEERUDDI CHOWKEEDAR (No. 8,) AND AUZEEZOOLLAH (No. 9)

Dacca.

1857.

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Case of  
 SHEIKH GOO-  
 NYE and  
 others.

Two prison-  
 ers released ;  
 the others con-  
 victed.

Remarks on  
 the framing of  
 the charge ;  
 and on the  
 illegibility of  
 the record.

CRIME CHARGED.—Nos. 1 and 2, perjury in having on the 5th and 15th January, 1857, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the Deputy Magistrate of Moonsheegunge, that they had seen Joun Khan, Munceruddi and others (whose names they specified) engaged in the affray, and in having on the 6th March, 1857, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the Sessions Judge of Dacca, that they had not seen those defendants in the affray ; such statements being contradictory of each other on a point material to the issue of the case. Nos. 3 to 9, perjury in having on the 3rd and 5th January, 1857, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the Deputy Magistrate of Moonsheegunge, that they *had seen both parties commit the affray and use weapons therein*, and in having on the 5th and 6th March, 1857, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the Sessions Judge of Dacca, that they *had not seen the affray*, and that they *had not seen weapons used* ; such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. C. Jenkins, Officiating Magistrate of Dacca.

Tried by Mr. J. E. S. Lillie, Sessions Judge of Dacca, on the 18th May, 1857.

*Remarks by the Sessions Judge.*—The contradictory statements for which the prisoners are indicted are detailed in the charge. It is established that those statements were deliberately made ; and it is obvious that they relate to points material to the issue of the case.

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The prisoners in their defence adhere to the statements they made at the Sessions.

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Case of  
SHEIKH GOO-  
NYE and  
others.

Concurring in the *futwa* of the Law Officer which convicts the prisoners, I sentence Nos. 1 and 2 to three (3) years' imprisonment with labor in irons, and the remaining prisoners to four (4) years' imprisonment with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The appeals of all the prisoners are substantially the same: namely, that they have throughout made the same statements to the Police, the Magistrate and the Sessions Judge, and have not committed perjury. In regard to prisoners Nos. 1 and 2, the record clearly and fully shews that they did not make the same statements they aver they did, and that they committed wilful perjury. In regard to prisoner No. 3, we observe there is no contradiction in his deposition before the Magistrate and Sessions Judge, which is what is charged; but after a severe cross-examination, there is the single contradiction, and that not a very clear one, as to the witness having seen arms in the hands of the parties he names as concerned in the affray. The same remarks apply to the case of prisoner No. 4. In the case of prisoner No. 5, he does not make the contradiction in the Sessions that "he had not seen the affray;" but there is the contradiction at the Sessions that he did not see the "weapons used," which, to the Deputy Magistrate he distinctly said he had seen. And this was a point material to the issue of the case, and is a part of the perjury charged. Prisoner No. 6, states distinctly to the Deputy Magistrate that he did see the affray, and he repeats this to the Sessions; but contradicts this part of his deposition there in a subsequent part of the same, and states clearly that he did *not* see the affray. The deposition of prisoner No. 7, presents the same feature. The prisoner No. 8 says to the Deputy Magistrate that he saw the affray and arms used. At the Sessions he says in reply to the positive question whether he saw the affray, that he did *not*; but in regard to seeing "weapons used," his statement is, that he did not see the weapons used *by particular individuals*. The case of prisoner No. 9 is the same. None of the prisoners substantiate any defence.

We reject the appeals of Nos. 1, 2, 5, 6, 7, 8 and 9; and, deeming the evidence insufficient for the conviction of prisoners Nos. 3 and 4, we acquit them, and direct their immediate release.

The charges against prisoners Nos. 3 to 9, should have been made separately for each; and not in an aggregate form, as has been done; for though the indictment warrants the conviction of the prisoners whose appeals are rejected, it does not apply in each individual case as fully and widely as the charge is laid.

The attention of the Sessions Judge is requested to Circular

Order No. 16, dated 30th June, 1857, para. 8. As one instance out of many, the Court would specify that in the conviction of Aradhun No. 2, the negative, *dekhi nahi*, might be read *dekhiachi*; and at once lead to an acquittal instead of the conviction of the prisoners.

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Case of  
SHEIKH GOO-  
NYE and  
others.

PRESENT:

A. SCONCE AND J. S. TORRENS, Esqs., *Judges*.

GOVERNMENT

*versus*

TARACHAND ALIAS TARA DOOLEY.

Hooghly.

CRIME CHARGED.—1st count, dacoity on the night of the 4th June, 1853, in the house of Jadoo Koloo of Satbangala, thannah Benipore, zillah Hooghly; 2nd count, having belonged to a gang of dacoits.

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CRIME ESTABLISHED.—Dacoity.

Case of  
TARACHAND  
alias TARA  
DOOLEY.

Committing Officer.—Baboo Chundur Seekur Roy, Deputy Magistrate under the dacoity Commissioner, Hooghly.

Tried before Mr. T. C. Loch, Additional Sessions Judge of Hooghly, on the 17th April, 1857.

*Remarks by the Additional Sessions Judge.*—The prisoner pleads “*not guilty*,” but his witnesses do not establish anything in his favor, on the contrary, speak of him as a bad character.

Prisoner ac-  
quitted; the  
evidence of the  
only two wit-  
nesses exam-  
ined being too  
unsatisfactory  
to admit of a  
conviction.

The prisoner was recognised at the time by Muthoor Chung during the fight that took place after the dacoity and was named by him both before the police and Magistrate, he is now denounced by the approver, witness No. 1, and the abovenamed Muthoor, witness No. 2, and considering the very bad character the prisoner has always borne, I see no reason to doubt the witness's testimony.

The second count is not established, and I acquit him therefrom.

I sentence him on the first count to fourteen years' imprisonment in banishment with labor and irons and two years' imprisonment in banishment with labor and irons in lieu of stripes, making in all sixteen years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) The prisoner, Tarachand (*alias* Tara) Dooley has been convicted by the Additional Sessions Judge, Mr. T. C. Loch, of committing a dacoity in the house of Jadoo Koloo of mouzah Satbangala, and has been sentenced to sixteen years' imprisonment in banishment with labor and

1857.      irons. The remarks of the Sessions Judge are as follows : "The  
 September 9. prisoner pleads *not guilty* ; but his witnesses do not establish any  
 Case of      thing in his favor. On the contrary, they speak of him as a  
 TARACHAND      bad character. The prisoner was recognised at the time by  
 alias TARA      Muthoor Chung during the fight that took place after the da-  
 DOOLEY.      coity, and was named by him both before the police and the  
 Magistrate. He is now denounced by the approver, Chunder  
 Dooley, and the abovenamed Muthoor ; and considering the  
 very bad character the prisoner has always borne, I see no reason  
 to doubt the witness's testimony." Upon the second count of  
 belonging to a gang of dacoits, the prisoner was at the same  
 time acquitted."

The deposition of the approver, Chunder Dooley, states that  
 about four years since he was concerned in this dacoity ; that  
 Bhugwan, who was Sirdar, called him ; and that besides, there  
 were the prisoner, and some others whom he named, and others  
 whom he forgot, fifteen or sixteen in all ; that after meeting,  
 they held a Kalee *pooja*, and at midnight attacked the house ;  
 that one man leaped over the wall and opened a door by which  
 the others entered ; that he (approver) remained on the path  
 outside, but prisoner went in to rob ; that on the villagers as-  
 sembling, they fled ; that no division was made of the plundered  
 property ; that he got nothing himself and did not see what was  
 taken ; that he had met the prisoner for the first time that  
 night ; that Bhugwan introduced them to each other, at the  
 same time saying that prisoner would undertake the robbery and  
 desiring him (approver) to stay outside ; that he forgets if he  
 ever was concerned in another dacoity with prisoner, but heard  
 from Bhugwan that prisoner belonged to his gang.

Such is the unsatisfactory testimony of the approver, Chun-  
 der ; careful mainly to excuse himself and to implicate the pri-  
 soner.

The second witness, Muthoor Chung, in his deposition said,  
 that four years since a dacoity was committed in the house of  
 Jadoo Koloo ; that his brother, the chowkeedar of the village,  
 called him and others ; that on assembling, they threw clods at  
 the dacoits who fled ; that they came to blows and witness  
 wounded one Deenoo Dooley ; and *that he knew no other*. Here  
 being reminded that to the Magistrate he had named Tara and  
 Deenoo, he said that he *had* named Tara now, repeating that  
 he had seen him. This and no more is the evidence of Muthoor.  
 The Sessions Judge did not press the witness for particulars ;  
 and as will be presently seen, did not require him to reconcile  
 his present and his old depositions.

It is true that when examined by the Darogah and by the Magis-  
 trate in June 1853, this witness named one Tara as being con-  
 cerned in the dacoity. To the Darogah he said he knew well  
 Mohesh, Mudhoo, Kheda, Bluga and Tara. This was on the 6th

June. He did not then name Deenoo at all, but subsequently, when examined by the Magistrate on the 15th June, he added Deenoo to the list of those whom, by the light of torches, he recognised. Now, in his first statement, Deenoo is the only dacoit named by him to the Sessions Judge. When his attention was called to the prisoner, he named him also ; but declared that he knew no more. Thus, after the lapse of four years, the only person prominently named by him is a man whom, on the second day following the dacoity, he did not name at all ; and four others whom on that second day he did name, he now wholly omits.

The Deputy Magistrate in his Calendar of commitment, after saying that Muthoor had clearly recognised this prisoner, Bhugwan and Deenoo, adds that the two latter have been transported for life. Now we find that Deenoo was convicted in three several charges, and that the Sessions Judge (Mr. Harrison) expressly cast aside the evidence given by the witness Muthoor, as to his recognition of Deenoo.

It appears to us therefore that the evidence of the only two witnesses examined is a great deal too unsatisfactory to admit of the conviction of the prisoner, Tarachand. The evidence of the approver is in its tenor evasive ; and not only is there no other evidence, except his own statement, that he was present at the dacoity ; but it appears that an approver of the name of Raechurn Joogee, who was employed to convict Bhugwan, (the so-called leader of the gang) in his deposition named neither Chunder, the approver made use of on this trial, nor the prisoner, Tara, nor even Deenoo. That is, three persons, who are shewn by the present trial to have taken part in the dacoity, were wholly ignored by one professing to be a co-dacoit, who by the confidence reposed in his veracity, has been raised to the position of an approver. The Deputy Magistrate attempts to explain away this remarkable omission by stating that the Dooleyas being of a different gang, were strangers to Raechurn. The conjecture is plausible, and may be more : but it is quite insufficient to displace the assertions and the negations of the recorded testimony, which in the present trial, is brought before us. We therefore acquit the prisoner.

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Case of  
TARACHAND  
alias TARA  
DOOLEY.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*GOVERNMENT AND JUCKSHOO ALIAS JUS-  
SAREETHOOLLAH*versus*DHURMAH KOOROOREAH (No. 5,) DHUNNAH KOO-  
ROOREAH (No. 6,) KASSEE HARREE (No. 7,) LEE-  
LOOAH CHOWKEEDAR (No. 8,) GOMBEIR (No. 9,) GOOLBAH (No. 10,) DABEE CHOWKEEDAR (No. 11,) RUTTUN CHOWKEEDAR (No. 12,) HURLAUL DAGEE (No. 13,\*) GUNDAREE DAGEE CHOWKEEDAR (No. 14,\*) LANGRAH (No. 15,) AND SHEIKH JANOO (No. 16.)

Purneah.

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Case of  
DHURMAH  
KOOROOREAH  
and others.One prison-  
er released;  
the rest con-  
victed. Re-  
marks on the  
manner in  
which the  
Judge's deci-  
sion should  
have been  
drawn up.CRIME CHARGED.—1st count, prisoners Dhurma, Dhunna, Kassee, Leelooah, Gombeir, Goolbah, Dabee, Ruttun, Hurlaul Dagee, Gundaree and Langrah, dacoity, breaking open the locks of the prosecutor's chest and *pettarah* and plundering property value 2,043 Rupees, 10 annas belonging to him; 2nd count, prisoner Langrah excepted, the above prisoners for keeping possession of property knowing it to have been obtained by dacoity, prisoner Janoo for purchasing and selling property knowing it to have been obtained by dacoity.

CRIME ESTABLISHED.—Prisoners Nos. 5 and 6, 2nd count, having in their possession property knowing it to have been obtained by dacoity; Nos. 7, 9, 10 and 15, 1st count, dacoity and plunder of property valued Rs. 2,043; 2nd count, having in their possession property knowing it to have been obtained by dacoity; Nos. 8 and 11, 1st count, dacoity and plunder of property valued Rs. 2,043; 2nd count, having in their possession property knowing it to have been obtained by dacoity; No. 12, 2nd count, having in his possession property knowing it to have been obtained by dacoity; No. 16, for purchasing and selling property knowing it to have been obtained by dacoity.

Committing Officer.—Mr. B. R. Perry, Deputy Magistrate of Kishengunge.

Tried before Mr. D. Cunliffe, Officiating Sessions Judge of Purneah, on the 28th April, 1857.

*Remarks by the Officiating Sessions Judge.*—This case was tried under the provisions of Act XXIV. of 1843, at Purneah on the 22nd, 23rd, 24th, 25th, 27th and 28th April, 1857.The prisoners pleaded *not guilty*.

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Case of  
DHURMAH  
KOOOROOREAH  
and others.

The prosecutor states that in Agun last he was sleeping in the eastern compartment of the house, while his father occupied the northern one; at midnight, the latter arose, and informed his son, that there were people outside. The prosecutor arose, and went with his father to see who they were; to their astonishment, they found that the house was attacked by armed dacoits with torches, and were advancing, firing their guns, and crying out, "*Jaye Kalee*;" observing that it was hopeless to resist, they made their escape in the opposite direction, towards the village, but before assistance could be obtained, the dacoits had effected their object, and the villagers arrived in time to see them absconding, but could not identify any of them, it being a dark night. Prosecutor and his father then proceeded to their house with some other persons, and found that two boxes and a *petarra* had been broken open, and emptied of their contents, consisting of silver ornaments, brass utensils, clothes, &c. valued Rs. 2,043-10 as. per list filed with the *misl*. Some few articles which were left and strewed about the premises by the dacoits were found the following morning. The prosecutor went to the Doolalgunge thannah, and gave information of the dacoity, when his deposition was taken, he merely suspected men of the Koorooreah and Harree caste known to be bad characters, and requested the Darogah to search their houses. On the police going to their huts, they were found all to be absent, and information was obtained, that they had concealed themselves in one Sheikh Remut's house, whose premises were surrounded by the police, when the men assembled, began to make their escape, four of them were apprehended, but what became of them eventually, prosecutor cannot state. One Guttee Moodie's house was searched, when property claimed by prosecutor was found, but as he could not satisfactorily identify it, this prisoner was acquitted by the Deputy Magistrate. The Darogah ordered the police to apprehend the Koorooreahs and Harrees, who were found to be absent, when Nos. 2 and 3, witnesses apprehended prisoners Nos. 5 and 6, who were escaping from a jungle with a bundle each of property, they were brought to the Darogah, and the bundles examined in the presence of prosecutor, who immediately identified his property, Nos. 10 to 18. The houses of Andee and Churn Sahoo were searched, when further property was discovered, they were also sent in to the Deputy Magistrate, but acquitted as the articles were not identified. By this time the Bahadoorgunge Darogah was deputed to assist, who apprehended a man named Kurtullah, a person of notoriously bad character, who suspected Kassoe, prisoner No. 7, and on his being arrested, he confessed to having committed the dacoity, and implicated prisoners Nos. 8, 9, 10, 11, 12, 13, 14 and 15, they were accordingly apprehended, and their houses searched, but prosecutor being indisposed, he did not accompany



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Case of  
DHURMAH  
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the police and after the property was found in the presence of witnesses Nos. 6, 7, 8, 9, 10, 12, 13, 15, 16, 31, 33, 34, 35, 36, 37, 38, 39, 40, 42 and 43, it was brought to his house when he identified a great portion of it, and declares, that all which has been produced in Court belongs to him, as proved by witnesses Nos. 45, 46, 47 and 48, and which is valued at Rupees 89. The remainder is still missing. The thannah deposition is dated 27th November, 1856, and that taken before the Deputy Magistrate on 18th February, 1857, the prosecutor accounts for the delay in bringing the case before the Court, to its being a complicated one, and the difficulty in making the requisite investigation, and tracing where the property was concealed. The only eye-witness to the fact is No. 1, who was arrested and confessed to the crime, and conditionally pardoned by the Deputy Magistrate, provided he would point out where the property was secreted by his associates, and through his instrumentality a small portion of it was discovered, but he does not appear to have rendered the assistance he might, for out of so large a sum plundered, only 89 Rupees' worth has been found; moreover, when he gave his deposition before this Court, he denied what he stated before the Deputy Magistrate in the hope of obtaining the release of his comrades, and admitted, that what he had stated before this Court was a falsehood. In a similar manner witness No. 53, who was a prisoner, and conditionally pardoned, contradicted the statement he gave before the Deputy Magistrate. I have directed the committal of these individuals under the provisions of Clause 1, Section V. Regulation X. of 1824. Witnesses Nos. 58, 59, 60, 69 and 70, have committed perjury on points material to the issue of the case, and have been ordered to be committed for trial on this charge. They are the connections of and of the same caste as the prisoners, and evidently gave false evidence to procure their acquittal. Prisoners Nos. 7, 8, 9, 10, 11 and No. 15 confessed before the police,\* and subsequently Nos. 7 and

\* Nos. 20, 22, 10, 23, 24, 25 15 before the Deputy Magistrate.† Witnesses bear testimony to its being voluntary.

† Nos. 27, 28, 29 and 30.

Some of the prisoners plead in their defence that the police maltreated them, others that the *goindas* with whom they are at enmity pointed out the property, and those who named witnesses declined to have their evidence taken before this Court, as they had deposed contrary to their wishes before the Deputy Magistrate, while the witnesses of others Nos. 82, 83, 84 and 86 depose contrary to the statements made by the prisoners, and fail to clear them of the charge; I therefore convict prisoners Nos 5, 6, 7, 8, 9, 10, 11, 12, 15 and 16 on their confessions taken in the Mofussil and before the Deputy Magis-

trate, the finding of the property on their persons, or about their premises, its recognition as a portion of prosecutor's plundered property, on the 1st and 2nd counts, and sentence prisoners Nos. 5, 6, 7, 9, 10 and 15 to twelve years' imprisonment each, with labor in irons and banishment; prisoners Nos. 8, 11 and 12, who are chowkeedars, to sixteen years' imprisonment each, with labor in irons and banishment; prisoner No. 16 to 7 years' imprisonment, with labor in irons; prisoners Nos. 13 and 14, who are old offenders, and have been imprisoned for ten and fourteen years for a similar offence (the latter being a chowkeedar) a reference has been made to the Court regarding them, as I consider they were deserving of a severer punishment than this Court can inflict. The Deputy Magistrate has been directed to enquire how prisoner No. 14, was appointed a chowkeedar on the estate belonging to Babu Portaub Sing, let in *putnee* to Mahomed Hossein and managed by Mr. J. R. Cave, his agent. The Deputy Magistrate's attention has been called to Circular No. 135, 22nd February, 1833, regarding the insertion of the names of the prisoners correctly and uniformly in the Calendar and directed to compare his English and Oordoo records before transmitting them to this Court, for I perceive that the date of the apprehension of prisoners Nos. 9, 10 and 12 are omitted in the English Calendar, and again only one witness is inserted to the Mofussil confession of prisoner No. 15, whereas three persons have attested it, also to Circular No. 203, 28th April, 1818. The Darogah of Bahadoorgunge has shewn great tact in tracing out the property, which the prisoners, some of them are notoriously bad characters, had pawned, buried, and concealed in various places, and it is not the first occasion on which he has proved himself to be a deserving officer, he served under me in the same capacity at Monghyr when Magistrate, and has received rewards for his meritorious services, his praiseworthy conduct on the present occasion will be brought to the notice of the Commissioner of Circuit. The Deputy Magistrate, Mr. Parry, under whose instructions the police acted, deserves equal commendation for the satisfactory manner in which he has brought the case to so favorable a termination. The Magistrate has been directed to supply his Court with lithographic forms, for I perceive the headings of the Calendar and the confessions of the prisoners are written, which creates great delay and inconvenience, especially as his Court is not provided with a clerk.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners, Dhurmah and Dhunah were seized with bundles, containing articles of stolen property identified by the prosecutor as his, while they were attempting to make their escape into the jungle. They do not claim the property, but state in their defence at the Sessions

1857.

September 9.

Case of  
DHURMAH  
KOOROOORAH  
and others.

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and others.

trial that the Chowkeedar, Sham, apprehended them, and taking them to his house, produced property, some of which he gave to each of them, and with it took them to the Darogah. To the Deputy Magistrate, however, the prisoners made no mention of Sham having foisted the property upon them, nor do they bring any witnesses to prove their statement. We reject their appeal.

The prisoner Gumbeir confessed to the Darogah. He stated to the Magistrate that he purchased a silver bracelet, which is identified by the prosecutor as his, and weighing 4 Rs., from the prisoner, Kooshya for Rs. 2, and put it into the thatch of his house, and it was produced by his wife, when his house was searched. At the Sessions trial the prisoner pleads that he was apprehended, but that nothing was found on him; that he gave a bribe of Rs. 13 to the Doolalgunge Darogah, who released him, but he was again apprehended by the Bahadoorgunge Darogah, who had been deputed to make the investigation; that the *goindas* had given him the silver bracelet and told him to give it to the Bahadoorgunge Darogah, when he would be released; and that he had acted in conformity with their advice. He has adduced no witnesses to prove his statements, and his story is highly improbable. Moreover the property is identified by the prosecutor, and the prisoner confessed in the *Mo-fussil*. The prisoner is named as an accomplice by other confessing prisoners whose statements agree with the evidence for the prosecution. We see no reason to interfere with his conviction.

The prisoner Debee chowkeedar, confessed to the Darogah. To the Magistrate he said, that after his house had been searched, he was taken to the Darogah, and then his mother threw out a broken *katora* into the jungle. On being examined he admitted having a *katora*, and that having ascertained from his mother where she had thrown it, he went, and produced it. The prisoner claimed the *katora* as his own. To the Sessions Judge the prisoner stated that the *goindas* had urged him to go to the Darogah and inform him that Ruttun, Hurlaul Dagee, and others had taken him to commit the dacoity, and that he had committed it; that on this, the Darogah asked him to produce the plundered property, saying he would get released; that he said he had none, but produced an old *katora*, which the prosecutor identified, and that he (prisoner) was then sent in. This prisoner refused to have his witnesses examined. The witnesses to the search depose that when the prisoner was apprehended, his mother interceded, and offered to produce the property; and then going into the jungle, about one hundred cubits from the house, produced the *bati*, No. 28, which has been identified by the prosecutor and his witnesses. The prisoner in his petition of appeal urges no grounds for impugning the conviction. We reject his appeal.

The only proof against the prisoner, Ruttun, is the fact of a *lota* claimed by the prosecutor being found in the prisoner's well, and which the witnesses to the search depose to have been produced by the prisoner himself. He denies the charge, and states that his house was twice searched; that on the first occasion the prisoner's own property was taken, and he was detained for seven days, and though prosecutor claimed the article, the Darogah, knowing that it did not belong to him, offered to let the prisoner go if he made it worth his while. Prisoner states that he then sold some pigs to a Morunghee unknown, and got Rs. 24. of which he paid Rs. 13 to the Doolalgunge Darogah, and was released; that he was nevertheless apprehended again by the Bahadoorgunge Darogah; that the money found in his house was part of the price of the pigs, and that the other property belongs to him (prisoner). The prisoner adds that the *lota* was produced from the well by Sahibram, whom the Darogah sent down to search, and that it does not belong to the prisoner, and that he did not put it into the well. We are not satisfied with the evidence against this prisoner, or the manner in which the property was found. We therefore acquit him.

The prisoner, Langrah, confessed to the Darogah and to the Magistrate. He says that it was in his house the dacoity was planned, and he accompanied the dacoits in their expedition; but he adds that he was unable, owing to a wound, to go up into the house, and had to remain some distance outside. He repudiates his confessions, when before the Sessions Judge, and makes a simple denial of the charge. The chief proof against this prisoner are his two confessions. We do not find any sufficient reason to doubt that they were made by the prisoner of his own free will, and they are supported by the facts on the record. We therefore reject his petition.

The Court draw the attention of the Sessions Judge to the very confused manner in which he has drawn up his English decision. It is difficult from it to gather what is the particular evidence on which *each* of the prisoners has been convicted, and it is the special duty of the Sessions Judge so to record his decision that this may clearly and specifically be evident. We also draw the attention of the Sessions Judge to the marginal note in his letter No. 55, of the 4th July, forwarding the appeal of Gombejr and others. From the letter it would appear that *eight* prisoners had appealed, whereas the petition shews the names of only *four* appellants.

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September 9.

Case of  
DHURMAH  
KOOROOREAH  
and others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*GOVERNMENT AND MR. BASHFORD, MANAGER ON  
THE PART OF MESSRS. WATSON & Co.*versus*

Rajshahye.

RADHAGOVIND SINGH.

1857.

September 10.

Case of  
RADHAGO-  
VIND SINGH.Prisoner con-  
victed, evi-  
dence for the  
prosecution  
being suffi-  
ent. Remarks  
on record of  
defence.

**CRIME CHARGED.**—1st count, having committed a felonious breach of trust within the meaning of Act XIII. of 1850, in having, while in the employ of Messrs. Watson, & Co. as gomastah of the Madarigunj silk-factory, been entrusted by reason of such employment with the receipt, custody or contract of certain sums of money amounting to Rupees 300 or Rupees 325, together with the accounts of the said factory, and that he absconded with the said money and papers; 2nd count, having stolen the said money and papers.

**CRIME ESTABLISHED.**—Felonious stealing, under Act XIII. of 1850, of 327 Rupees, or thereabouts, the property of his employers, the same having been entrusted to him by reason of such employment.

**Committing Officer.**—Mr. W. J. Longmore, Joint-Magistrate of Rajshahye.

Tried before Mr. I. Jackson, Officiating Sessions Judge of Rajshahye, on the 11th March, 1857.

*Remarks by the Officiating Sessions Judge.*—The prisoner is charged on a first count, with breach of trust under Act XIII. of 1850, for that being in the employ of Messrs. R. Watson & Co. as gomastah of their silk-filature at Madarigunj, he did, on or about the 25th April last, abscond from the service of his said employers, having then in his possession a sum of 325 Rupees or thereabouts, entrusted to him by means of such employment, together with the accounts and papers of the said factory.

The second count charges him with theft.

The evidence against the prisoner consists mainly of the deposition of Mr. Bashford, the prosecutor, and those of three burkundazes in Messrs. Watson's service, with a statement of account filed by Mr. Bashford, which is admitted on the trial to have been signed and sent in by the prisoner.

Mr. Bashford had no personal knowledge of the prisoner, but on receipt of the account marked A, sent orders to him to come in, with his papers and cash balance. As the prisoner did not appear, Mr. Bashford laid an information before the Magistrate. The prisoner was not apprehended for several months afterwards,

in fact not until January last, and before the Magistrate, denied the charge, asserting that he had applied for leave of absence on account of illness, and being refused had sent in his account and balance or *howlat*.

1857.

September 10.

Case of  
RADHAGO-  
VIND SINGH.

The burkundazes *Emarut and Shamlall* circumstantially deposed that the prisoner, on receiving the summons from Mr. Bashford after nightfall, announced his intention of proceeding to Surda before morning; that accordingly he started long before day-break that night, having previously taken out of the strong box, and counted before their eyes 325 Rupees, which he gave to his servant to carry, together with a quantity of books and papers; that he went with them in company for some distance, and on reaching a place called Chunapara about cockerow, prisoner with his man and bundle gave them the slip as they were relieving nature; that after a fruitless search, they gave information to Mr. Bashford. The third burkundaze *Bonomalee* confirms this story so far as to depose that he saw also the Rupees counted, and that he saw the prisoner start with the 1st and 2nd witnesses. The fourth witness *Sreenath Bagchee*, also in Watson's employ, had been originally named by the prisoner as a witness to his defence, but afterwards disclaimed, and was called by the prosecutor to disprove the prisoner's allegations, he could only say that he knew of prisoner being employed as *gomashtah* at Madarigunj, and that he had not seen him since last April, when he understood that prisoner had absconded.

In this Court, the prisoner was defended by a respectable *vakeel* of the Court establishment; the points relied on were, the discrepancies between the statements of the burkundazes and the position contended for, that the facts did not constitute an offence under the Act. After examining the two first witnesses to the defence, from whom nothing whatever was elicited, the pleader declined proceeding further, and left the case in the hands of the Court.

In my judgment, the case must go entirely upon the evidence of Mr. Bashford, the account filed and the admissions of the prisoner. The statements of the burkundazes cannot be relied upon, being in their nature improbable and vitiated by serious discrepancies, while the third witness from his own admissions is plainly unworthy of all credit.

I reject therefore that part of the case for the prosecution, which would bring home to the prisoner the actual carrying away, on the 25th April, of the sum of money laid in the indictment; but I think him certainly guilty of absconding with an admitted balance against him of 327 Rupees, of which he has given no account, and which, it must be inferred, he has misappropriated. I have no doubt of this being an offence under the Act.

The Law Officer gives a *futwa* of conviction as to the em-

1857.  
September 10.

Case of  
RADHAGO-  
VIND SINGH.

bezzlement upon the whole evidence, although I dissent from this verdict so far as to place no reliance on the witness above mentioned, yet I concur in the conviction, and I therefore see no grounds for making a reference to the Nizamut Adawlut.

In consideration of the circumstances of the case, and of the prosecutor's request that the prisoner should not be severely dealt with, a sentence of two years' imprisonment, with labor and a fine of 300 Rupees under Act XVI. of 1850, appears an adequate award.

Mr. Bashford's established character makes it almost needless to say that I acquit him of all participation in the falsehood of which I consider his servants to have been guilty.

There is reason to suspect that the witness *Bonomalee* is not the person whom he describes himself to be, the Magistrate will therefore be directed to make enquiries on the subject with a view to his commitment for trial, if the suspicion should turn out to be well-founded.

This case has not been so carefully prepared as might have been expected from an Officer of Mr. Longmore's experience, there being no proof available of the prisoner's signature to the account filed, the prisoner's pleader, however, admitted it to save a postponement of the trial. The circumstances of the prisoner's arrest also as described in the grounds of commitment, might have formed a material link in the chain of circumstantial evidence, but no evidence thereof was adduced.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner's appeal urges, *firstly*, that the Judge has convicted him on the evidence of Mr. Bashford alone, and that Mr. Bashford depended on the statements of his servants; *secondly*, that there is no proof that prisoner absconded with the money; but that being ill he went on leave, and that it is unjust to convict a man of embezzlement when he absents himself for a while under such circumstances.

Mr. Bashford's evidence clearly proves that prisoner absconded without accounting for the sum for which he had to account as gomashtha, and which he had in trust. Prisoner also admits the account put in as his. Mr. Bashford's evidence is based on that account. We see no reason to distrust Mr. Bashford's deposition, and it is fully admissible under Section 28, Act II. of 1855.

The prisoner substantiates no defence, and his absence from April to January, and subsequent apprehension at Beaulah, are quite irreconcilable with the supposition of his innocence, under the circumstances of this case. The Sessions Judge records the prisoner's defence as pleading *not guilty*. The record then proceeds "The pleader for the prisoner stated his further objections orally." But what was thus stated is not on the vernacular record of the trial. Although the Judge, in his judgment,

states that the defence consisted of the pleas that the evidence was too discrepant to sustain a conviction, and that Act XIII. of 1850, did not apply to the prisoner's case, still we think the Sessions Judge should have placed on the vernacular record the substance of the pleader's arguments for the defence, and have had the defence so recorded duly signed by the pleader. (Vide page 126, 131 of Carrau's Edition of the C. O. N. A. where the "oozur" is specified; also para. 11, p. 121 Circular Order of 16th July, 1830, No. 54.) But no objection is raised on this score in the petition of appeal; nor do we see that there has been any denial of justice in the case. We reject the appeal.

1857.  
September 10.  
Case of  
RADHAGO-  
VIND SINGH.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

GOOROOPERSHAD COOMAR (No. 1.) TEETOOLALL  
BABOO (No. 2.) GUDADHUR DOSS ALIAS EKADU-  
SEE (No. 3.) AND SAGUR RAOOL (No. 4.)

Midnapore.

CRIME CHARGED.—1st count, murder, in having on the night of the 16th April, 1857, corresponding with the 6th Bysack, 1264 so assaulted the deceased, Soodhee Bewah, with blows of the fist and sticks, that she died from the effects of such an assault on the following day; 2nd count, Nos. 1, 3 and 4 being accessories to the above murder after the fact, and No. 2 being the same both before and after the fact.

1857.  
September 11.  
Case of  
GOOROOPER-  
SHAD COOMAR  
and others.

Committing Officer.—Mr. S. Lushington, Officiating Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 26th June, 1857.

*Remarks by the Sessions Judge.*—The prisoners plead "not guilty" before this Court—No. 1 in his defence states, that the deceased had left his house two months before, and that he was elsewhere when she died.

Prisoners convicted. Remarks on defective manner of taking medical testimony in the case.

No. 2 states, that all have leagued against him to ruin him.

Nos. 3 and 4, that they did not beat the woman, but that No. 1 did, by orders of prisoner No. 2.

The circumstances of the case are as follows:—Soodhee Bewah, the deceased, was the sister-in-law of prisoner No. 1, Goorooopershad Coomar. A few months before her death, she was found to be pregnant, of which circumstance the villagers



1857. took advantage to demand money from him. On the morning of the 7th Bysack, Soodhee's corpse was found in a *moribund* state lying\* in a dilapidated house formerly belonging to one Ram Doss, and not far from the house of Teetoolall Baboo, prisoner No. 2. Information was immediately conveyed to the police, who first arrested prisoners Nos. 2, 3 and 4. Prisoner No. 1 had left the village, but was arrested on the 8th or 9th Bysack by witness No. 1, Mooscheeram Sawont. The three first alluded to, confessed before the police; the first that he counselled and assisted prisoner No. 1, in procuring abortion of the deceased, for which purpose she had been sent to one Poddee Bustummee's; that on the Tuesday previous to her death she came back to his (No. 2's) house and remained there Tuesday, Wednesday and Thursday; that on the night of Thursday prisoner No. 1, had an altercation, in his, Teetoolall's house, with the deceased who accused him of having caused her pregnancy, on which prisoner No. 1, violently assaulted her, and took her towards Poorsuttumpore; that he knew nothing further, but had heard that morning that the corpse of Soodhee was found in Ram Doss's deserted house.

Case of  
GOOROOPER- \* Mohun Ghora, witness No.  
SHAD COOMAR 21, page 39,  
and others. Keshub Sing, chowkeedar, wit-  
ness No. 22, page 40.

The confessions of the other two are to the effect;—that they heard a disturbance at Teetoolall's house on that night, went there, and saw prisoner No. 1 quarrelling with the deceased; that she accused him of causing her pregnancy, on which he got angry, and severely assaulted her when she fell down insensible; that all three accompanied by Teetoolall, prisoner No. 2, then carried her in a *moribund* state and deposited her where she was found the following morning.

The confessions or admissions made before the Deputy Magistrate are as follows:—

Teetoolall prisoner No. 2, denied the charge and declared he was not at home on the Thursday aforesaid; but when his confession before the police was read to him, he admitted that it contained what he had stated.

Gudadhur *alias* Ekadusee, prisoner No. 3, and Sagur Raool, prisoner No. 4, confess to having seen No. 1 commit the assault on Soodhee in Teetoolall Baboo's house; that she fell down insensible, and in accordance with Teetoolall's orders, was carried by the other three prisoners in a *moribund* state to Ram Doss's dilapidated house and there left.

The *post mortem* examination shews that the woman was five months gone in pregnancy;† that the foetus had been destroyed; that the asuteri had been lacerated by the insertion of some hard substance such as wood or iron, and that perito-

† Baboo Oodyechand Dutt,  
Sub-Assistant Surgeon, witness  
No. 12, pages 24 and 25.

nit is had resulted; that, in addition to these internal injuries of a fatal nature, there were external injuries found on the body also sufficient to account for death.

Soodhee, the deceased, was a young woman of about sixteen years of age. It is in evidence that when the fact of her pregnancy could no longer be concealed, the prisoner No. 1 applied to prisoner No. 2 to help\* him out of the difficulty. This aid

\* Srimutty Dasee, witness No. 19, pages 33 to 37.

† Unundee Doss, witness No. 23, pages 41 and 42.

‡ Bolakee Doss, witness No. 20, page 38.

Teetoolall, prisoner No. 2, readily afforded; he applied to one Unundee Doss of Poorsuttumpore† to give medicine which would cause abortion, and he ordered one Bolakee Doss.‡ witness No. 20, to take the prisoner No. 1 and Soodhee, the deceased, to the house of Poddee Bustummee, where it is most probable the fœtus was destroyed, in what manner I have stated above when noticing the Sub-Assistant Surgeon's deposition.

Three or four days before the unfortunate girl's death she had returned from Poddee Bustummee's to the house of Teetoolall Baboo.§ and on the night

§ Teetoolall Baboo, prisoner No. 2's confession.

|| Mohun Gooreea, witness No. 13, pages 26 to 28.

Rajoo Bismec, witness No. 14, pages 29 and 30.

Subul Mundle, witness No. 15, pages 31 and 32.

Bewah crying out that she was being killed; but they were afraid of interfering. The conduct of Teetoolall Baboo is scarcely explainable on the supposition that he merely wished to befriend prisoner No. 1, and shield him from disgrace. In the latter part of the deposition of deceased's sister-in-law, Srimutty Dasee, witness No. 19, it comes out that deceased was in the habit, since Phalagoon, of taking the milk of their cow to Teetoolall's. This was unusual, (a Gwalah had hitherto purchased it) and would lead to the inference that the prisoner Teetoolall, was more deeply interested in the matter than at first sight appears. There is not a tittle of evidence in support of the defence, which is contradicted by those of the witnesses cited by prisoners, whose evidence they permitted to be taken.

The *futua* of the Law Officer convicts the prisoners Nos. 1 and 2, of being principals in procuring the abortion of Soodhee Bewah, which resulted in her death; and prisoners Nos. 3 and 4, with being accessaries after the fact, and declares them liable to *tazeer*. Concurring in this conviction, I would recommend that Gooroopershad Coomar, prisoner No. 1, and Teetoolall Baboo, prisoner No. 2, be sentenced to imprisonment for life

1857.

September 11.

Case of  
GOOROPERSHAD COOMAR  
and others.

1857. and Gudadhur *alias* Ekadusee Doss, prisoner No. 3, and Sagur Raool, prisoner No. 4, each to ten years' imprisonment.
- September 11. *Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It is impossible to discover from the record by whose hand the deceased met with her death, or what was the immediate cause of the murder. The medical testimony, most imperfectly taken by the Deputy Magistrate and Sessions Judge, sets forth that there were both external and internal marks of such violence as would be sufficient to cause death; but what were the external marks observable have not been described. The internal injuries shew that violence had been used to expel the fœtus. The record shews that the deceased was five months gone with child; that she had been residing in the house of Teetoo Baboo, prisoner No. 2 for a month; that all the prisoners according to their own admissions were more or less implicated in procuring the abortion; and that they were all present when she was beaten. Prisoner No. 1, charged the other prisoners with having beaten and taken deceased, still breathing, to one Ram's deserted house. Prisoners Nos. 3 and 4 admit that they with prisoner No. 2 were present when prisoner No. 1 beat the deceased; and that by orders of prisoner No. 2, who accompanied them, they assisted the prisoner No. 1 to convey the deceased to Ram's house. The prisoner No. 2 admitted before the Darogah that he was present when prisoner No. 1 beat the deceased; and that when prisoners Nos. 1, 3 and 4 conveyed the woman to Ram's house, he (prisoner No. 2) accompanied them for a short distance. He denied the charge before the Magistrate; but admitted that he had made the confession recorded by the Darogah; the truth of which we see no reason to question. We convict the prisoners of aiding and abetting in the murder of Musst. Soodhee Bewah; and sentence them, prisoners Nos. 1 and 2, who appear to have been principally concerned in procuring the abortion and subsequent murder, to transportation for life; and prisoners Nos. 3 and 4 to imprisonment with labor and irons for fourteen years, in banishment.
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PRESENT:

A. SCONCE AND J. S. TORRENS, Esqs., *Judges.*

GOVERNMENT

*versus*

JAHIR (No. 4,) NOKIR (No. 5,) SHOOKUR MAHOMED (No. 6,) ARMAN KHAN (No. 7,) NOOROOILLA (No. 8,) RAJJUB ALLEE (No. 9,) LOEJE (No. 10,) SULLOO SIRDAR (No. 11,) AND MUDDUN MOHUN DOSS (No. 12.)

Backergunge.

CRIME CHARGED.—Riot, in which the prisoners Nos. 4 to 11 were wounded by gun-shots.

1857.

CRIME ESTABLISHED.—The same as crime charged.

September 11.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Case of  
JAHIR and  
others.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 15th May, 1857.

*Remarks by the Sessions Judge.*—In concurrence with the *fatwa* of the Officiating Law Officer, I convict the prisoners and sentence them as shewn below.

Prisoners acquitted, in an affray with gun-shots; the evidence for the prosecution being unsatisfactory, and the circumstances of the case affording grounds for distrusting that evidence.

The prisoners are *lattiahs*, headed by the prisoner No. 12, Muddun Mohun Doss, who is a notorious character. They attacked and plundered the *hāt* of Kakcheera. On their attempting to attack the kutcherry at the same place they were repulsed by the servants and dependants of Alef Chowdree, the party in possession of the *hāt*. Some of the prisoners were slightly wounded by gun-shots.

I entirely concur with the Magistrate in opinion that this is a riot and not an affray. The party attacked were comparatively speaking few in number, and there is no proof that they had received previous intimation of the intentions of the aggressing party. This resistance to the attack was justifiable, and the attack was grossly premeditated. In this district, where affrays arising out of land feuds are very common, it is not unusual to keep a gun or two in the kutcherry of an estate, the possession of which is in dispute. The Burrisal *lattiahs* will face a *soolfee*, but they have a wholesome dread of a gun. It is clear that in this instance, the discharge of the guns and the slight wounding of a few of the attacking party put a stop to what would otherwise have ended in a very serious riot, with probably the loss of several lives.

The prisoners Nos. 4 and 5, confessed before the Magistrate. The evidence of the witnesses for the defence is not satisfactory and the *alibi* set up by the principal prisoner No. 12, Muddun Mohun Doss, has completely broken down.

1857. *Sentence passed by the lower Court.*—No. 12 to be imprisoned for seven years and Nos. 4, 5, 9, 10 and 11 each, to be imprisoned for five years with labor and irons; and Nos. 6, 7 and 8 to be imprisoned each without irons for three years and to pay a fine of fifty Rupees on or before the 30th May, 1857, or in default of payment to labor until the fine be paid or the term of their sentence expire.

September 11. Case of JAHIR and others.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) The remarks of the Sessions Judge in this case are given above. Upon the view of the evidence, which has led to the commitment and to the conviction of the prisoners, the riot charged occurred as follows: It is said that on the afternoon of the 14th Poos last or 27th December, 1856, five or six boats conveying more than a hundred men put to at the creek, which adjoins the market called *hât Kakcheera*; that it was market-day; that Muddun Mohun Doss, described as a notorious fighting man, and others, were the leaders of the party; that Muddun Mohun Doss ordered the party to land and plunder the *hât* and zemindary kutcherry; that accordingly the men landed and began to plunder the *hât* and disperse (it may be meant) those who frequented the *hât*; that they went on towards the kutcherry; that they were then *fired* at by the people of the zemindar, Mahomed Alef, and that they then retired to their boats and went off. It is not alleged that of the party of Mahomed Alef or of the dealers or purchasers, any person was assaulted by the assailants; but of the prisoners, eight were struck with shot from the guns discharged at them: and the Sessions Judge has, under the above circumstances, held the firing to be justifiable.

Upon the facts of the case, as set forth by the witnesses for the prosecution, it appears to us that much doubt exists as to the truthfulness of the representation which the witnesses intended to convey. Indeed so far as the evidence goes, we are rather left to infer what a hundred or a hundred and twenty-five armed men might have done, than told what they did. But we think that looking to the course of events on the day of the asserted riot and subsequently, the evidence as it comes before us, is not to be relied on.

It appears that Mahomed Alef and Allemooddeen are cousins, and claim to hold shares in the same estates. For some time a breach of the peace was said to be threatened on both sides; and a burkundaz, Gooroochurn, had been simultaneously *deputed* to the spot. Accordingly, as shewn in the statement of this burkundaz which was transmitted by the Phareedar on the 31st December, Gooroochurn had gone on the 14th Poos to the mouzah Gyanpara, within which *hât Kakcheera* lies, and found no trace of any assemblage on either side; on the 15th Poos he went to the *hât*-itself, and there was told that the day be-

fore Mohun Doss had come in a boat to collect the rents of the minor Allemooddeen; that he was attacked from the shore by the people of Mahomed Alef; that several of Mohun Doss's people were wounded, and he could not trace them; and that all the people of the *hât* and of Gyanpara, and the chowkeedar, being dependants of Mahomed Alef, would not disclose what had actually occurred. Such up to the 15th Poos was all that upon the scene of the asserted riot on the day following its occurrence, a police officer could learn. Moreover on the receipt of this information the Phareedar himself went to *hât* Kakcheera; and on the 1st, 2nd, 3rd and 5th January, his reports to the Magistrate shew that neither by Mahomed Alef, nor by his people nor by the residents in or frequentors of the *hât* had any complaint been made to him of the *hât* being attacked and plundered or the kutcherry threatened. In his report of the 5th January, he said it was rumoured that on Mohun Doss coming with *lattiials*, some of his people were shot by the other side and had fallen into the river; but that no one, on any side, had yet appeared. Upon the 6th January, however, the Phareedar transmits a petition of date 24th Poos, which had been presented to him by one Aruzdee Mundul; and in which, with a great array of names, the attack assumed the feature which it now bears. Thus *not till ten days after* the occurrence, was any complaint preferred by those who professed to be aggrieved by the asserted outrage. But in the mean time, the other party had not been silent. Six days before, that is on the 18th Poos, a petition was presented by Allemooddeen to the Magistrate, in which he complained as the wronged party. In this petition, Allemooddeen stated that on the 14th Poos, he, his gomashita, Chidam, and others, being twelve in all, including three boatmen, were going to his "*baree*" to collect his rents; that they stopped at the creek of *hât* Kakcheera; that they were attacked by fifty or sixty men from the shore; that several of his people were wounded by shots, fired; that he jumped into the water and was picked up by persons in another boat; that these men took him to their own home and so on. This petition the Magistrate appears to have received on the 2nd January. A second objection to the proceedings of the police was presented on the 3rd February, but no special steps appear to have been taken to enable the petitioner to substantiate his charge. Whatever had occurred, Allemooddeen put himself forward as a principal, and he courted enquiry, he did not shelter himself by substituting a dependant as the head of the expedition, and if the Magistrate's Court had not been in a manner closed against him, we know not what the enquiry which he desired to prosecute, might have disclosed.

Under the above circumstances, very great suspicions adhere to the case as made out for the prosecution, and indeed the cha-

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September 11.

Case of  
JAHIR and  
others.

1857. racter which the principal witnesses assume strengthens this suspicion. They profess to be wholly unconnected with Mahomed Alef; and say that they live in another zemindar's land, across the creek which runs past the *hāt*. Nevertheless, though they lived near, and if they had any interest at all, even interested in disclosing what they saw, they, for ten days, held back from the police all the particulars which they subsequently revealed.

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JAHIR and  
others.

Finally, we would observe that what are described as the confessions before the Magistrate of the prisoners, Jahir and Nokir, if in other respects unobjectionable, are not admissions of the prisoners guilty of the crime charged.

We reverse the conviction of the Sessions Judge and acquit the prisoners.

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PRESENT :

A. SCONCE AND J. S. TORRENS, Esqs., *Judges*.

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## GOVERNMENT

*versus*

Mymensingh.

KOMOLAKAUNT KURR.

1857.

September 11.

Case of  
KOMOLAKANT  
KURR.

Prisoner acquitted, perjury as to relationship not being proved.

**CRIME CHARGED.**—Perjury, in having, on the 6th January, 1857, deposed under solemn declaration taken instead of an oath before the Magistrate of Mymensingh in the case of Birjonath and Ramlochan Kurr *versus* Ramnath Talookdar that no relationship existed between himself and the plaintiff, Birjonath, such statement being false and having been intentionally and deliberately made on a point material to the issue of the

**CRIME ESTABLISHED.**—Perjury.

Committing Officer.—Mr. C. E. Lance, Magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 23rd May, 1857.

*Remarks by the Sessions Judge.*—The prisoner was named as a witness in a case under Act IV. of 1840, pending before the Magistrate and having deposed before him that he bore no relationship to the parties thereto, he was committed to this Court on a charge of perjury, it having been proved that the prisoner was cousin to Birjonath, the plaintiff, in that case. In his defence, the prisoner stated before the Magistrate that Birjonath was his kinsman, but very distant; that the question was put to him in such a manner that he became confused and that he only denied his relationship to the defendant in that case. In

this Court he made the same statement and added that he did not understand the question, owing to the noise made by the mooktears of the parties at the time. I agree with the Law Officer in convicting the prisoner of perjury. The prisoner now admits that he is cousin to Birjonath, which has also been corroborated on the evidence of witnesses Nos. 1 to 7. He urges that he and the plaintiff in the Act IV. case were very distant cousins, some fourteen generations removed, but which is of no avail, because when the relationship is not denied, the fact of his being a distant relation cannot exculpate him. He further pleads deafness, and that in consequence he did not understand the question properly, but I remark that witness No. 8, the mohurrir of the Foujdarry Court, who took down the prisoner's deposition, deposed before me on oath, that the question was clearly explained to the prisoner and was taken down in writing just as he stated it. The prisoner examined a few witnesses to prove that he did not hear well, but the evidence of some of them is at variance with the prisoner's statement, as the latter states that in consequence of an attack of cholera he became deaf, while his witnesses, Nos. 11, 12, 14 and 16, say that he became partially deaf from an attack of fever. Considering on the above grounds that the prisoner wilfully and deliberately committed perjury that more stress might be laid on his evidence, I convict him of the same, and sentence him to three years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) Apart from any objections which there might be as to bringing home the crime of perjury to the prisoner, arising from the mode in which he was interrogated on the point of his relationship with the plaintiff in the Act IV. case, the Court is quite of opinion that there is no satisfactory proof in this case that there exists in fact that degree of relationship between the parties which would have made his denial as to connexion, otherwise than correct. The prisoner, up to his defence in the Sessions Court, maintains that his connexion with the party in question sprung from very many generations back, but he does not, as assumed by the Judge, make any admission that the statement advanced by the person charging him with perjury, viz. that he was the near cousin of the plaintiff, was correct. The evidence which was adduced to prove that the prisoner was such near cousin, the Court conceive, wholly breaks down; and indeed the Sessions Judge himself appears to admit that the connexion was one of fourteen generations back; which being the case, would not have made the prisoner's statement that he was unconnected otherwise than correct. On this view of the case, we reverse the decision of the Sessions Court; and order the release of the prisoner.

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September 11.

Case of  
KOMOLAKANT  
KURR.



## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Midnapore. DOHEE SEET (No. 19,) AND KALLY SEET (No. 20.)  
 1857. CRIME CHARGED.—Dacoity and having belonged to a gang  
 of dacoits.

September 14. Committing Officer.—Captain C. H. Keighly, Assistant da-  
 coity Commissioner, Midnapore.

Case of DOHEE SEET and another. Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions  
 Judge of Midnapore, on the 19th August, 1857.

Prisoners convicted. Remarks on ap-  
 prover-wit-  
 nesses whose  
 general con-  
 fessions were  
 taken after ap-  
 prehension of  
 prisoners. Al-  
 so on proper  
 mode of refer-  
 ring to records.

*Remarks by the Officiating Additional Sessions Judge.*—1st  
 count, two approvers\* depose  
 that they went with the prison-  
 ers to commit this dacoity; that  
 they remained on guard outside while the prisoners and others  
 entered the house; that after some time the dacoits came out  
 again, and the Sirdar told them that the owner of the house had  
 been murdered; and that the dacoits then went off with what-  
 ever property they had picked up. A reference to the original  
 proceedings affords a full and satisfactory corroboration of the  
 testimony of the approvers. Rutnee Bewah, the mistress of  
 Oochub Seet, the owner of the house, deposed before the police  
 and before the Magistrate that she was sleeping with Oochub  
 when the attack was made; that he was killed by the dacoits  
 at the place he had been sleeping by blows from axes; and that  
 she recognized the two prisoners. Prisoner No. 20, confessed  
 before the Darogah and stated that prisoner No. 19, his brother,  
 and witness No. 2, were also present at the dacoity. Prisoner  
 No. 19, stated before the Darogah that his brother and others  
 asked him to accompany them to commit the dacoity, but that  
 he refused; that they and witnesses Nos. 1 and 2, went off to  
 commit the dacoity; and that they afterwards returned and told  
 him of the murder. Several other persons were arrested. Bheem  
 Bhoonya, Gobind Doss and Nagoo Doss confessed before the  
 Darogah and implicated the two prisoners and the two witness-  
 es. In a report dated the 13th April last, the Darogah reports  
 that Rutnee Bewah is not to be found.

Second count, there is no corroboration of the evidence of the

† Witness No. 1, Hurry Jana,  
 No. 2, Gungoo Jana.

two approvers,† who implicate  
 the prisoners in this dacoity, be-  
 yond the fact that the occur-

rence of the dacoity was reported. Witness No. 2, did not name the prisoners in this dacoity in his original confession.

*Defence of the prisoners.*—No. 19 simply denies his guilt, No. 20 states that Modhoo Mallick induced the approvers to denounce him, the prisoner; two witnesses examined on behalf of prisoner No. 19, say that he is a bad character. One of prisoner No. 20's witnesses, says that he is bad character, and the other does not know whether his character is good or bad.

I convict the prisoners of having belonged to a gang of dacoits and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) We reject the evidence of the witness Gungoo Jana No. 2, as his confession was taken *subsequent* to the apprehension of the prisoners. We do not thereby intend to declare that his evidence is without exception unworthy of credit, but simply, for the reason assigned, we do not admit it against the prisoners in this case. Both prisoners are named by witness No. 1, in his confession taken *previous* to their apprehension, and they have been identified amongst a number of other people. They were recognized by Rutnee Bewah, the mistress of Oochub Seet (count 1,) at the time of the dacoity, and when apprehended, confessed: No. 19, to privity to, and No. 20, to complicity in the dacoity; but for want of other proof their mofussil confessions were considered insufficient for conviction. The confessions of other prisoners, apprehended for the same dacoity, viz. Bheem Bhoonya and Gobind Doss, include the names of the prisoners. We convict them under Act XXIV. of 1843, and sentence them to transportation for life with hard labor.

The Sessions Judge's attention is called to the orders issued by this Court in the cases noted

\* N. A. Reports, page 719, May 29th, 1857, Mohobut's case.

Page 700, May 29th, 1857, Cossinath Chung's case.

Page 655, May 13th, 1857, Gopal Doss's case.

Page 631, May 5th, 1857, Rajun Maleet's case.

searching for the separate papers.

1857.

September 14.

Case of  
DOHEE SEET  
and another.

in the margin,\* requiring that when reference is made in his Report to records sent up to this Court, he should specify the page or other particulars of such record; otherwise the time of this Court is wasted in

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Midnapore. KANNOO MAHITEE (No. 3.) DURPOO JANA (No. 4.)  
AND KALLEECHURN JANA (No. 5.)

1857. CRIME CHARGED.—Dacoity and having belonged to a gang  
of dacoits.

September 15. Committing Officer.—Captain C. H. Keighly, Assistant da-  
coity Commissioner, Midnapore.

Case of KANNOO MA-  
HITEE  
and others. Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions  
Judge of Midnapore, on the 24th August. 1857.

*Remarks by the Officiating Additional Sessions Judge. Para.*

Prisoners con- \* Witness No. 1, Takeer Pal. 3.—1st count, one approver\*  
victed. Re- criminales the three prisoners in  
marks on the this dacoity ; but the original proceedings afford no corrobora-  
propriety of a tion. The approver was arrested at the time of the occurrence ;  
precise me-  
thod of refer- † Witness No. 1, Takeer Pal, 2nd count, two approvers† cri-  
ring to evi- „ No. 2, Lukee Jana. minate the three prisoners in  
dence. this dacoity ; and their evidence

is satisfactorily corroborated by the original proceedings. Dur-  
pokurn, one of the dacoits, was seized with some of the plundered  
property by a chowkeedar as he was leaving the village after  
the commission of the dacoity, and it appears from the chowkeed-  
ar's evidence that Durpokurn admitted to him that prisoners  
Nos. 4 and 5, and witness No. 1, had also been engaged in the  
dacoity. The owner of the house stated that he had recognized  
by the light of a torch prisoners Nos. 4 and 5 ; Durpokurn con-  
fessed in the mofussil, and stated that prisoners Nos. 3 and 5,  
and two witnesses had also been engaged. The owner of the  
house and the chowkeedar adhered to their former statements  
when examined by the Magistrate, and the chowkeedar added  
that Durpokurn had also named to him prisoner No. 3.

*Para. 4. Defence of the prisoners.*—No. 3, states that he was  
formerly employed in the house of witness No. 2, but that he had  
a quarrel with that witness because he would not pay him wages ;  
and that he has been falsely denounced in consequence of that quar-  
rel. He adds that witness No. 1, has no cause of enmity against  
him. Nos. 4 and 5, simply deny their guilt, and state that the  
approvers have no cause of enmity against them. Some of the  
witnesses of the prisoners give them a good character, some a  
bad one, and others say that they do not know whether they  
are good or bad.

The confession of witness No. 2, was taken before the arrest of any of the prisoners. Prisoner No. 3, was brought into the station and the confession of witness No. 1, was taken on the same day. The other two prisoners were subsequently arrested. The witnesses were kept under separate guards in distinct guard-rooms, apart from all the other approvers, from the time they were brought into the station until their confessions were completed. The record of the case referred to in the first count, was not received by Captain Keighly until after the confession of witness No. 1, had been taken.

I convict the three prisoners of having belonged to a gang of dacoits and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The evidence of the approver witnesses is consistent with their general confessions. This in the case of witness No. 2, was taken before the apprehension of any of the prisoners, and in that of witness No. 1, before the apprehension of prisoners Nos. 4 and 5, and on the same day as that of prisoner No. 3. The special certificates of the Committing officer in his grounds of commitment shews that there is every reason to believe there could not have been collusion or error as to the residence, or as to the identification of the prisoners. The evidence of the witnesses for the prosecution is well corroborated in the manner stated in the 3rd paragraph of the letter of reference of the Sessions Judge, except that it seems doubtful if Kannoo Mahitee is previously specified in the copy of Dhurpo Kurn's confession to the police where he is called Kali, though the residence there stated is that of prisoner No. 3, viz. "*Meer-godah*." The prisoners in the Foujdary Court state no reasons for enmity, and none are substantiated at the Sessions. With reference to the remark in the margin,\* the Court observe that the Sessions Judge should be more precise. Witnesses Nos. 5, 6 and 7, called by prisoner No. 3, give him a bad character; witnesses Nos. 8 and 10, called by prisoner No. 4, give him a

\* Para. 4th. "Some of the witnesses of the prisoners give them a good character, some a bad one, others say they do not know whether they are good or bad.

good character; witness No. 9, called by him gives him a doubtful one; witnesses Nos. 11 and 14, called by prisoner No. 5, give him a good character, and Nos. 12 and 13, a doubtful one.

We convict the prisoners Nos. 3, 4 and 5, under Act XXIV. of 1843, and sentence them, under the same Act, to be transported for life with hard labor.

1857.

September 15.

Case of  
KANNOO  
MAHITEE  
and others.

PRESENT:

H. T. RAIKES, Esq., *Judge*.

## GOVERNMENT

*versus*

NAMOOHE (No. 1,) NAMOKYE (No. 2,) MAKAE (No. 3,) SORANG (No. 4,) THAO (No. 5,) AND BAE-THONG (No. 6.)

1857.

September 15.

Case of  
NAMOOHE  
and others.

Prisoner con-  
victed; but  
sentence modi-  
fied as beyond  
the Law.

CRIME CHARGED.—1st count, going forth with a gang with offensive weapons with the criminal intent of committing dacoity; 2nd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Going forth with offensive weapons with intent of committing dacoity.

Committing Officer.—Mr. W. H. Henderson, Magistrate of Chittagong.

Tried before Mr. R. Abercrombie, Additional Sessions Judge of Chittagong, on the 27th March, 1857.

*Remarks by the Additional Sessions Judge.*—The Poang Rajah, head of the Brindabun family of Hill chiefs, who has been entrusted by the Government with the charge of the police within his own Hills, and is expected to keep up an armed force to protect his riots from the inroads of the Hill tribes, which have lately become very frequent and alarming, received intimation that a body of dacoits were in the neighbourhood of the village of Munglayparah and sent off a force to apprehend them, headed by his cousin Mukhoo Chowdree, witness No. 11. They succeeded in seizing six men, the prisoners Nos. 1 to 6, who were armed with guns, spears, axes, &c., and provided with false beards for the purpose of disguising themselves, and to avoid detection. They were forwarded to the Magistrate, before whom they confessed that they had assembled at the instigation of one Benkree Sirdar, a noted character, who, according to the records supplied by the Magistrate, seems to have been concerned in several inroads, but has never been apprehended. The prisoners, who belong to the *Khoonee* tribe, had been prowling about the village of Munglayparah for upwards of a fortnight, they had seized and carried off one of the villagers, Pokung Moorung, witness No. 1, and threatened to murder him, unless he gave them 400 Rupees, but had released him on his promising to collect the money from the villagers within six days. This man instead of going home made the best of his way to the Poang Rajah, who sent off the force to seize the dacoits.

The prisoners were apprehended in the jungle close to Munglayparah, at a distance of about six days' journey from their homes, armed with guns, spears, &c., and provided with means

of disguise, by a party of the Poang Rajah acting as police. They confessed before the Magistrate that the object of their visit was to commit a dacoity, and repeated that confession at the Sessions trial. Agreeably to the orders passed in the Sudder Nizamut Report of 4th July, 1845, I tried the case with the aid of the Law Officer, who declared the prisoners guilty on the first count, but not on the second. Concurring with the *futwa* of the Law Officer and not considering there was sufficient evidence to convict them on the second count, I sentenced them as below.

*Sentence passed by the lower Court.*—Imprisonment for seven years each with labor and irons, and two years in lieu of corporal punishment.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. T. Raikes.) I see no reason to interfere with the conviction of these prisoners on the charge brought against them; but the punishment prescribed for the offence of which these prisoners have been found guilty is limited by Clause 4, Section IV. Regulation LIII. of 1803, to seven years; the two years further imprisonment awarded by the Judge in lieu of stripes is not warranted by the law; that period must be remitted. I confirm the sentence for seven years only, with labor and irons.

1857.

September 15.

Case of  
НАМООНЕ  
and others.



# SUMMARY CASES.

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SEPTEMBER.

1857.





# SUMMARY CASES

SEPTEMBER, 1857.

## PRESENT:

C. B. TREVOR AND D. I. MONEY, Esqs.,

*Officiating Judges.*

## GOVERNMENT

*versus*

JOOGEE MUNNA.

Midnapore.

1857.

CRIME CHARGED.—Culpable homicide in having so struck his wife, deceased, Mussummat Soondurree in a fit of anger, first a slap and afterwards (when she fell down insensible) with a chopper, that she died from the effects thereof.

Committing Officer.—Mr. S. Lushington, Officiating Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 21st July, 1857.

*Remarks by the Sessions Judge.*—The prisoner pleads “not guilty,” but has no defence whatever to urge. The circumstances of the case are briefly as follows. Some fifteen days before the death of Mussummat Soondurree, she and her husband Joogee Munna, the prisoner at the bar, had a quarrel, and the latter gave his wife two slaps with his hand. On the day of her death it appears that the whole family went to an adjoining Mulberry field to pick leaves for silk-worms. The prisoner asked his wife, the deceased, to take a handful of the leaves from him and put them down. She refused and said, “Ask your sister, the witness No. 1, and your sister-in-law, witness No. 2, with whom you cohabit, to do so. The man then went to home, his sister Gopee and sister-in-law Laree following him, the deceased remained in the field. On reaching his house the prisoner put down the leaves he had collected and taking up a bill-hook returned to the field, a distance of some 300 yards. The two women alarmed at his proceedings had followed him and saw him give his wife who was sickly person, a box on the left ear, which knocked her down, and afterwards a blow on the left shoulder with the bill-hook. The poor woman died almost immediately and was carried by her husband and thrown into the river Kossyee which flows close to the spot where the murder was committed. This occurred about sunset.

September 3.

Case of  
JOOGEE  
MUNNA.

Remarks on  
C. O. No. 15,  
7th July, 1848,  
having been  
rescinded.  
Also on C. O.  
No. 70, of the  
14th Novem-  
ber 1851, with  
reference to  
commitment  
on a higher  
charge than  
found by the  
magistrate.  
Also on illegality of the conviction by the judge, and as to the proceedings he should have adopted.

Wit. No. 1, pages 5 to 8 Sreemuttee Gopee.

” ” 2, pages 9 to 11 Sreemuttee Laree.

1857.  
September 3.

Case of  
JOGGEE  
MUNNA.

The prisoner and witnesses Nos. 1 and 2, returned home, and that night mentioned what had happened to his cousin Rughoo, witness No. 14, who advised him to give information to the police. They both proceeded to the thannah and the prisoner informed the Darogah that he had lost his wife and could not find her.

Wit. No. 14, pages 24 to 26, Rughoo Munna.

The Darogah proceeded to the village and found the body of the deceased Soondurree in the river, about half a mile from prisoner's house, it had a gash on the left shoulder.\* The prisoner on being further questioned confessed that he had killed his wife as described by witnesses Nos. 1 and 2.

\* Wit. No. 4, page 13, Sabul Berah Moodhia,  
" " 5, pages 14 and 15,  
Horee Kamar.

To prove his guilt there is the testimony of two disinterested eye-witnesses and his own confession corroborated by the circumstantial evidence. The prisoner himself produced the *lethal* weapon. The body was too decomposed to permit of a satisfactory *post mortem* examination.

The *futwa* of the Law Officer declares the prisoner guilty of wilful murder and liable to "*kissas*."

The Magistrate under the impression that the prisoner acted under a sudden fit of anger provoked by the gross imputation cast on him by his wife, has charged him only with "culpable homicide." The Circular Order No. 15, dated 7th July, 1848, precluded my ordering the graver offence to be charged or I should have done so. There is no doubt in my mind that wilful murder would have been the more appropriate charge. The prisoner had ample time for reflection; after the abuse was given by his wife, he left her in the field, went home, got the bill-hook, returned and perpetrated the fatal assault.

I would convict him of aggravated culpable homicide and recommend that he be imprisoned with labor and irons for life.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. C. B. Trevor and D. J. Money.) No. 706, dated 3rd September, 1857.

The Court observe that the Circular Order No. 15, dated 7th July, 1848, to which the Sessions Judge refers, has been rescinded.

It was competent to him under the subsequent Circular Order No. 70, of the 14th November, 1851, when he discovered that the facts, *as found* by the Magistrate, did not establish the crime charged, but a *higher* offence, at once to stop the proceedings on the trial, and remand the case to the Magistrate with directions for a fresh commitment on the higher charge which the facts derived from the evidence did establish.

The conviction by the Judge of the prisoner of *aggravated*

culpable homicide, when the charge on which he was committed was simply that of culpable homicide, was altogether illegal.

If the Sessions Judge, *having taken the defence* of the prisoner, was of opinion, before he convicted him of aggravated culpable homicide, that he should have been committed for wilful murder, he should either have acquitted him of the charge on which he was committed, or have applied to this Court for authority to quash all the proceedings on the trial, and to direct the re-commitment of the prisoner on the charge of murder.

The Court, following the precedent in the case of Government *versus* Mungle Roy (1st December, 1852, page 796 of the Decisions of the Nizamut Adawlut,) quash all the proceedings connected with the commitment and the trial of the prisoner, and direct that the Sessions Judge cause him to be committed on a charge of murder, when he will proceed on the new trial on that charge in the usual course, taking care to have all the witnesses re-examined on the charge of murder, as to the facts in detail, and a fresh defence taken from the prisoner to the new depositions.

1857.

September 3.

Case of  
GOOHEE  
MUNNA.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

GOOHEE SHEIKH MUNDAL DAGEE.

Moorsheda-  
bad.

1857.

CRIME CHARGED.—Bad character.

Committing Officer.—Mr. W. C. Spencer, Officiating Magistrate of Moorshedabad.

September 7.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 28th May, 1857.

Case of  
GOOHEE  
SHEIKH MUN-  
DAL DAGEE.

The Magistrate considering it necessary to require security from the prisoner for a longer period than he is authorized to demand, submitted the case to the Sessions Judge under Regulation VIII. of 1818. On the 28th May, 1857, the prisoner was sentenced by the Sessions Judge to furnish two securities in 100 Rs. each for his good behaviour for three years from the 6th May, 1857, or in default to be imprisoned with labor for those three years from that date, the labor commutable to a fine of 20 Rs. if paid within fourteen days from the 28th May, 1857.

Appeal re-  
jected. Re-  
marks on con-  
viction under  
Sec. 9, Reg.  
VIII. 1818.

1857.

September 7.

Case of  
GOOHKE  
SHEIKH MUN-  
DUL DAGEE.

*Resolution of the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) No. 637, dated 19th August, 1857.

The Court observe that in the Sessions Judge's proceeding of 13th May, there is a distinct order that the Darogah very irregularly searched the prisoner's house, and that the place where the *seend kattee* was found was *not* specified; further, the Sessions Judge records that he did not trust the proceedings in the matter of the search. Moreover that the prisoner's defence had not been taken to the charge (brought under Regulations VIII. of 1818 and I. of 1819,) and that the case should be remanded; and that the *defence of prisoner should be taken*. But on the record is found only the prisoner's defence of 29th April; and yet the Sessions Judge in his final proceeding of 28th May refers to the full execution of his orders on remand.

The Judge is requested therefore to submit an explanation of this discrepancy on the record, within seven days; and to certify whether a fresh defence was taken or not after the remand of 13th May, and, if it was taken, why that defence is not on the record; and why the Sessions Judge's order is said to have been carried out, if such defence was not taken after the order of the Sessions Judge of May 13th.

*With reference to the above Resolution the following letter, No. 356, dated 24th August, 1857, was submitted by the Officiating Sessions Judge.*

I have the honor to forward a copy of a letter No. 783,\* dated 22nd idem from the Officiating Magistrate to my address, and the papers of the case referred to therein. The papers now sent appear to have been omitted by the Magistrate's *mohafiz* when the rest of the *nuthee* was sent, and I regret that the omission was not discovered in this office; you will observe that the defence of the prisoner Goohee was taken by the Magistrate after the remand of the 13th May last.

The Resolution reached me on the 22nd instant.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) No. 683, dated the 7th September, 1857.

\* *From the Officiating Magistrate of Moorshedabad to the Officiating Sessions Judge of Moorshedabad, No. 783, dated 22nd August, 1857.*

In reply to your letter No. 352, of this day's date just received I have the honor to inform you that the defence therein referred to was duly taken by me, and indeed if I remember right, previous to your deciding the case, the record was returned to me for that purpose, and then re-dispatched to your office; it is probable, however, through the carelessness of my *mohafiz* it was left out of the *nuthee* when the case was sent to Calcutta. It has, however, been found and the Assistant Magistrate has been directed to forward it to you.

Proper orders shall be passed regarding the *mohafiz* on my return to Berhampore.

The Court observe that there should have been an official record of the previous convictions of the prisoner from the Record-keeper, and these should have been referred to by the Sessions Judge in his final proceeding. The evidence upon the record is to the effect that the prisoner has been before imprisoned for some offence; and also once in default of giving security for good behaviour. The witnesses for the prosecution depose to prisoner being seized in one case with a *seend kattee* under suspicious circumstances; and on the remanding of the other case by the Officiating Sessions Judge's order of the 13th May, further evidence was taken, and it was *then* proved that a second *seend kattee* had been found on the prisoner's premises in such a manner that it could not have been put there collusively by the police or others. There is evidence also of the prisoner being a person of suspicious livelihood. The law under which he is convicted is Section 9, Regulation VIII. of 1818. The Officiating Sessions Judge convicts under that law because the prisoner is "*irreclaimable*." (Vide Section 9.) But the Court think the evidence more strongly shows that the prisoner is "*by habit a burglar*." (Vide also Section 9.) On this last ground the Court reject the appeal. The prisoner has in no way proved the assertions made by him that a false statement had been made by Neelkant Saha.

1857.

September 7.

Case of  
GOHIE  
SHEIKH MUN-  
DUL DAGEE.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

East-Burd-  
wan.

1857.

GOVERNMENT

*versus*

DURPONARAIN DOME (No. 8,) POTEL DOME (APPELLANT No. 9,) KOOSOOI BAGDEE (APPELLANT No. 10,) DINOO MUSSALMAN (No. 11,) MADHOB DOME (APPELLANT No. 12,) OOOHUB AUGHORI (APPELLANT No. 13,) MODHOOSOODUN BAGDEE (No. 14,) DHURMO DOSS (No. 15,) NUFFUR BAGDEE (APPELLANT No. 16,) LUCKHEEMONEE BAGDINEE (APPELLANT No. 17,) AND MUN MOHINEE BAGDINEE (No. 18.)

September 12.

Case of  
POTEL DOME  
and others.

Remand for  
examination of  
witnesses for  
defence, as re-  
quired by Sec-  
tion IV. Regu-  
lation IX. of  
1796, and Ni-  
zamut Adaw-  
lut Report p.  
94, Vol. V.  
Boodhye's  
case, 6th Augt.  
1838.

CRIME CHARGED.—Nos. 8 to 16, dacoity in the house of Kartickchurn Ghose and plundering therefrom property to the value of Rupees 2,897-4; 2nd count, No. 16, having in his possession two silver *taviz*, value 8 rupees, acquired by the above dacoity, well knowing it to have been so acquired. No. 17

1857. having in her possession a bag containing Rupees 62, acquired by the above dacoity, well knowing it to have been so acquired.  
 September 12. No. 18 having in her possession one silver *poinchee*, valued at Rupees 6-12, three silver *mols*, value Rupees 2-8, and one gold *pepulpattee*, value Rupees 3, acquired by the above dacoity, well knowing them to have been so acquired.

Case of  
 POTEI DOME  
 and others.

CRIME ESTABLISHED.—Nos. 8 to 13 dacoity. No. 16, dacoity and knowingly receiving part of the plundered property. Nos. 17 and 18 receiving plundered property, knowing it to have been acquired by dacoity.

Committing Officer.—Mr. H. B. Lawford, Magistrate of East-Burdwan.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of East-Burdwan, on the 10th June, 1857.

*Remarks by the Officiating Sessions Judge.*—As Kartickchurn Ghose was sleeping in his house on the night of the 19th Choitro, 31st March, 1857, it was broken into by a band of dacoits,\* and property valued at Rupees 2,897 was plundered from it. As the robbers were retreating, the prisoners Durponarain Dome and Potei Dome (Nos. 8 and 9) were knocked down and captured.†

\* Wit. No. 1, Kartickchurn Ghose,  
 " " 2, Moteelal Bagdee.

† Wit. No. 3, Khoodeeram chow-  
 keedar,  
 " " 4, Banessur ditto,  
 " " 5, Narain ditto,  
 " " 6, Nobin ditto,  
 " " 7, Madhub ditto.

Both of them confessed before the police and gave up the names

of their confederates, several of whom were recognised at the time of the dacoity by Kartickchurn Ghose and his witnesses. The prisoner No. 8 repeated his confession before the Magistrate. Before this Court all the prisoners deny the charge and have produced numerous witnesses in support of their defence, but I do not consider the evidence adduced in defence of sufficient weight to invalidate the direct evidence which has been brought forward on the part of the prosecution, and I have therefore convicted six of the prisoners on the charge of dacoity and two others on the charge of knowingly receiving a part of the plundered property; the three remaining prisoners having been acquitted by me for the reasons stated in acquittal statement, No. 8 for June. The amount of proof against the convicted prisoners is as under.

Prisoner No. 8. Was captured at the time of the dacoity, was recognised by seven witnesses and confessed before the police.

Prisoner No. 9. Was captured and recognised as above, and confessed before the police.

Prisoner No. 10. Was recognised by two witnesses, and named in the Mofussil and Foujdary confessions of prisoner No. 8.

Prisoner No. 12. Was recognised by two witnesses, and named in the Mofussil and Foujdary confession of prisoner No. 8, and in the Mofussil confession of prisoner No. 9. 1857. September 12.

Prisoner No. 13. Was recognised by seven witnesses, and named in the Mofussil and Foujdary confession of prisoner No. 8, and in the Mofussil confession of prisoner No. 7. Was even on the day of the dacoity in the house of the prisoner No. 18, which is in the village where the dacoity occurred, his own house being in a village three coss distant. Case of POTEI DOME and others.

Prisoner No. 16. Was recognised by seven witnesses, and named in the Mofussil and Foujdary confessions of prisoner No. 8, and in the Mofussil confession of prisoner No. 9. Part of the plundered property found in this prisoner's house has been duly sworn to as being that of Kartickchurn Ghose (witness No. 1.)

Prisoner No. 17. Was arrested endeavouring to make her escape from her house with a chintz bag containing 62 Rupees concealed under her arm pit, the chintz bag having been recognised by Kartickchurn Ghose and other witnesses as being his property. The defence set up by this prisoner is that she was the kept mistress of one Mukhunlal Mittre, an influential person in the village, by whom the bag and money were given to her. The former part of the defence has been deposed to by six witnesses,\* who moreover depose to

\* Wit. No. 5, Narnain chowkeedar, prisoner a bag such as that found  
 " " 7, Madhub ditto, in her possession, but they can-  
 " " 98, Joodisto Dome, not positively identify it. Mu-  
 " " 99, Gholamee Bagdi, khunlal Mittre, though cited as  
 " " 100, Deenoo Kulloo, a witness for the defence, has  
 " " 101, Binode Bagdee, moreover failed to attend, and I

am unable to accept the doubtful evidence adduced in favor of this prisoner in preference to the direct evidence of recognition adduced on the part of the prosecution.

Prisoner No. 18. Some of the plundered property was found in the house of this prisoner, and prisoner No. 13 was seen in her house on the day of the dacoity. She pleads that the plundered property was put into her house by one Sectanath Mittre, but has called no witnesses for her defence. I find the searching of her house was conducted in the proper manner.

Having found prisoners Nos. 8, 9, 10, 12 and 13 guilty of dacoity, and No. 16 guilty of that offence, and knowingly receiving part of the plundered property, I have sentenced them to (7) seven years' imprisonment each with labor in irons.

Prisoners Nos. 17 and 18 having been convicted of receiving



1857.      plundered property knowing it to have been acquired by dacoity,  
 September 12.      have been sentenced to (2) two years' imprisonment each with  
                          labor suitable to their sex.

Case of      The conduct of the village police chowkeedars, Nos. 3 to 7,  
 POREL DOME      in contending with the dacoits, and arresting two of them on  
 and others.      the spot, is worthy of commendation, and the Magistrate will  
                          be requested to pay them a suitable reward. The manner in  
                          which the Darogah carried out the investigation is also deserv-  
                          ing of favorable notice.

*Resolution by the Nizamut Adawlut.*—No. 691, dated the  
 12th September, 1857, (Present: Messrs. G. Loch and H. V.  
 Bayley.)

The Court observe that the prisoners Nos. 9, 10 and 17, state  
 in their petition of appeal that the witnesses called by them for  
 the defence were not sent in and examined. On reference to  
 the record we find such to be the case. The Sessions Judge  
 has on the Calendar marked those witnesses as absent, and has  
 apparently been satisfied with the Nazir's report that the wit-  
 nesses were not forthcoming. His attention is called to the  
 provisions of Section 4, Regulation IX. 1796, and to the Niza-  
 mut Adawlut Reports, Volume V. page 94, 6th August, 1838,  
 case of Boodhye. We therefore remand the case, and direct the  
 Judge to ascertain from the prisoners whether they wish the  
 witnesses, absent when the case was tried, to be examined or  
 not; and in the event of their answering in the affirmative, he  
 will require the Magistrate to take steps to secure their attend-  
 ance within fifteen days from the receipt of the order of this  
 Court. The Sessions Judge will also state under what law he  
 tried the case.

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Q U A R T E R L Y  
No.  
FOR OCTOBER, NOVEMBER, AND DECEMBER.  
1857.

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**NOTICE.**

WITH reference to Government Order, dated the 27th May, 1857,  
No. 2783, *Quarterly* Numbers of Selected cases will in future be published.



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REGULAR CASES.

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OCTOBER,

1857.

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REGULAR CASES.

OCTOBER, 1857.

PRESENT:

A. SCONCE AND J. S. TORRENS, Esqs., *Judges.*

GOVERNMENT

*versus*

RADHANATH BISWAS.

West Burd-  
wan.

1857.

October 1.

Case of  
RADHANATH  
BISWAS.

CRIME CHARGED.—Wilful murder of his mother Hurree Koitancee and of his grandmother Pearee Koitancee on the night of the 2nd July, 1857, corresponding with 19th Assar, 1264 B. S.

Committing Officer.—Mr. C. Jenkins, Officiating Joint-Magistrate of Bancoorah.

Tried before Mr. P. Taylor, Sessions Judge of West Burdwan, on the 3rd September, 1857.

*Remarks by the Sessions Judge.*—This extraordinary case is of the most simple nature. The prisoner, who pleaded guilty, has thrice confessed that he killed, first his mother Hurree Monee because her sick moanings in chronic dysentery disturbed him and then his grandmother Pearee Monee because she interfered to save Hurree Monee. He has also, all along declared, that he slew both the deceased women, by repeated blows, inflicted with a *bowtee* or sharp iron bill-hook, fixed into an oblong pedestal of wood, at an obtuse angle, and used in cutting vegetables, fish, &c. weighing one seer, which has been produced with blood upon it. The witness No. 1, Juggernath Biswas, who is a cousin of the prisoner, and lives about eighteen feet from him, was awakened by his cries, or those of his grandmother, went close to his verandah, saw him in the act of killing Pearee Monee, with the *bowtee*, tried to prevent him, and was abused and driven away. Gopal Mahoot, witness No. 14, attracted by the cries of witness No. 1, came up in time to see the prisoner throw down the above instrument, and shut himself up in his house. Thakoordoss Bagdee Ghatwal, witness No. 2, as well as the above two persons and Nobeen Singh,\*

Prisoner, convicted of the murder of his mother, and grandmother, sentenced capitally.

\* Witness No. 21.

depose to the apprehension of the prisoner, the next morning, the finding of the bodies, the extraction of a blood-stained axe weighing 14 chittacks, with its handle, from the house in which prisoner had *slept* after the murder, &c. The confessions made by prisoner, in the mofussil, and before the Officiating Joint-Magistrate, coincided, and have been duly sworn to by the wit-

1857.

October 1.

Case of  
RADHANATH  
BISWAS.

nesses, named under the proper heads in the Calendar, while that made before me, is to the same effect. The witness No-been, before named, has moreover, identified the *bowtee* and axe, as the property of the prisoner, and Lalla Baboo Ram, native doctor, has shewn, that of eleven wounds, found by him upon Pearee Monee, and four upon Hurree Monee, one received by each, across the arteries of the neck, was the proximate cause of death. Under such circumstances, there can be no possible doubt of the prisoner's guilt, and, as the witnesses distinctly affirm, that he has never been disturbed in mind, and his appearance and conduct, though reckless, are to all appearance, perfectly rational, I am obliged, in accordance with the Law Officer's *futwa* of *kissas*, to recommend that he be convicted of wilful murder and punished capitally.

The prisoner stated in his confession before this Court, but in that only, that he had himself been suffering two months, from "*peth bedna*" or gripes, when he committed the murder. This, which is likely to be true, as he clearly wishes to die, may, possibly have been the cause of his extreme fury, at being disturbed by his mother's complaints. He never put a single question to the witnesses, and once, on being asked to do so, said "What questions have I to put? hang me at once."

The prisoner has a calm and handsome countenance, with very regular features, of a somewhat noble, though stern, expression. The evidence, as to the bloody state of the axe, is doubtful, though the native doctor is of opinion, that weapon must have been used. The wounds he describes were, much more probably, inflicted by the *bowtee*, held by the pedestal, and used with both hands.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) We have few remarks to make in this case in addition to the report of the Sessions Judge. On his trial, the prisoner pleaded guilty to the murder of his mother and his grandmother: and when called on for his defence declared that he had first attacked his mother, and when interrupted by his grandmother, turned his blows upon her. The death of both women appears to have been almost instantaneous. Juggernath, a near neighbour and a relative of the prisoner, towards morning, having been disturbed by the shouts or cries of prisoner and of his grandmother, went near and saw prisoner in the act of murdering the latter. Shortly after, prisoner shut himself up in his house; Juggernath gave the alarm; and when joined by others, they searched and found both women lying outside the house, dead.

Prisoner says he killed his mother because he was worried by her lamentations. No other cause is traceable. The woman Hurree appears to have suffered from a disease connected with her periodical courses; *not* from chronic dysentery as stated by

the Sessions Judge. "She was very ill," prisoner said, in his confession, to the Joint-Magistrate, "and would not die."

We convict the prisoner of the crime charged, and as proposed by the Sessions Judge, we sentence him to suffer death.

1857.

October 1.

Case of  
RADHANATH  
BISWAS.

PRESENT :

A. SCONCE AND J. S. TORRENS, Esqs., *Judges*.

GOVERNMENT AND OTHERS

*versus*

NEELADHUR SINGH (No. 2,) UNUND SINGH (No. 3.)  
BUSTEE SINGH (No. 4,) RAMMOHUN MYTEE (No.  
5,) MUNEEROODDEEN JAMADAR (No. 6,) JHATOO  
SAONT (No. 7,) UNUND SAHOO (No. 8,) AND GO-  
BIND PAL (No. 9.)

Midnapore.

1857.

CRIME CHARGED.—Plundering not amounting to dacoity, in having attacked the house of the prosecutor, Mirtunjoy Chuckerbutty, with lighted torches, &c., and plundered therefrom property to the value of Rupees 1,479 with petty assault.

Committing Officer.—Mr. S. Lushington, Officiating Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 10th August, 1857.

*Remarks by the Sessions Judge.*—The *futwa* of the Law Officer acquits the principal prisoner, Junmojoy Mullick, but convicting the others, declares them liable to *tazeer*, not being able to concur in this conviction, I refer the trial for the orders of the superior Court.

October 2.

Case of  
NEELADHUR  
SINGH,  
and others.

Prisoners  
acquitted, the  
facts of the  
case being op-  
posed to the  
truth of the  
charge.

There are indeed nine witnesses who swear to having seen the plunder. The first of these is Madhob Misser, the nephew of the prosecutor, and the party who originally brought the charge. The Magistrate himself has doubted the veracity of this witness on no less an essential point than his recognition of the prisoner No. 1, who has been acquitted, but he contends that "it is not for a moment to be argued that because the prosecutor's agent compromised him by too sweeping assertions or even down right perjury that the prosecutor is therefore to be deprived of his reparation, &c." admitting this argument, it is still obvious that no reliance can be placed on the testimony of such a witness. Of the remaining eight witnesses seven are the residents of Deybaog, east *Bhur*, and the ryots of Soondarnarain Chowduree, the other is a pyke.

The principal prisoner in this case Junmojoy Mullick, is the proprietor of the west *Bhur* or division of the aforesaid village



|             |                                               |                                                                                              |
|-------------|-----------------------------------------------|----------------------------------------------------------------------------------------------|
| 1857.       | Deybaog. It is in evidence*                   | that he has a quarrel with his neighbour, Soondurnarain, and with the prosecutor Mirtunjoy.† |
| October 2.  | * Wit. No. 40, Bachoo Dey, pages 153 and 154. |                                                                                              |
| Case pf     | " " 41, Bachoo Dunapat, pages 155 to 157.     |                                                                                              |
| NEELADHUR   | " " 48, Doorgachurn Nundy, pages 170 and 171. |                                                                                              |
| SINGH       |                                               |                                                                                              |
| and others. |                                               |                                                                                              |

† Decree of Court filed by prisoner dated 17th July, 1855.

was deputed to make the local investigation, the Darogah not having deemed the report of the occurrence as given to him by the chowkeedar‡ and another; and by Taronee§ Sein pyke sufficient ground for holding an enquiry without special orders.

‡ Wit. No. 4, Gobind Soutra, pages 37 to 43.  
" " 2, Suroop Jan, pages 26 to 31.

§ Wit. No. 3, Taronee Sein, pages 32 to 36.

The *sooruthal* was made by the nazir six days after the occurrence, ample time to make up appearances. Had the local enquiry been made at once, it would have afforded some corroboration of the evidence of the eye-witnesses; as it is, it cannot be so considered.

The Darogah of police received intimation from Gobind Soutra and another that Nugdoes and others had plundered prosecutor's house. Taronee Sein pyke, calling himself also a phareedar, sent a report that from one hundred and fifty to two hundred and fifty men had made the attack, but no mention whatever was then made that a *palankeen* had been seen to leave the house, nor was the name of any prisoner then given, except Unund Singh and this only in the phareedar's report and not by witness No. 4, and No. 2 who gave the first intimation of the occurrence.

The omission of Madhob Misser to go at once to the thanah and urge the release of his uncle, the prosecutor, who is said to have been carried off bound by the rioters and his delay in laying a complaint before the Magistrate tend, in my opinion, to throw doubt on the honesty of the charge. This man when urged by the nazir declined to have any steps taken either for recovery of the plundered property or for the release of his uncle. The sudden appearance of his uncle, Mirtunjoy Chuckerbutty, a mooktiar of the Courts after this, is remarkable. In addition to the doubtful conduct of this prosecutor, there are discrepancies, improbabilities and want of circumstantial details in the stories of the different witnesses which preclude any confident reliance on their statements. The eye-witnesses are almost to a man the ryots of the east *Bhur* of Deybaog and there is not a respectable man amongst them. It also appears suspicious

that the prosecutor's nearest neighbours, who were the prisoner's ryots, should every one of them have been made prisoners in this case. It has further been well urged by a vakeel for the defence that complainant's petition contains the name of sixty-one rioters whereas neither he nor his witnesses have been able to name a fifth of them in their depositions.

Doubting then the evidence, I am of opinion that these prisoners should also be released.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) We agree with the Sessions Judge in discrediting the charges preferred in this case. Obviously the *gravamen* of the charge consists in the forcible seizure, carrying away and detention of the prosecutor, Mirtunjoy. This person, in his statement to the Nazir whom the Magistrate employed to enquire into the matter, said, that from Sunday to Tuesday he was confined in a *kutcherry* in Ghomessurpoor; that he escaped late on the night of Tuesday; that all Wednesday he slept in a plantain garden; that Thursday and Friday he went to another village, and on Saturday went to the Nazir. This statement is incredible; Ghomessurpoor is only half a mile from the prosecutor's house, and yet on escaping, the prosecutor did not go there, and took no steps to communicate with his friends or to complain of the wrong done to him. Further, we observe that though a *pyke*, a *chowkeedar* and another immediately complained to the Darogah of the plunder, nothing was said to the Darogah of the carrying away of the prosecutor; and the statement of this *pyke*, Taronee, is otherwise not reconcilable with the deposition of the prosecutor.

We direct the prisoners to be immediately released.

1857.

October 2.

Case of  
NEELADHUR  
SINGH  
and others.

Jessore.

1857.

October 5.

Case of  
MADHUB  
CHUNDER  
DHOBÍ.

PRESENT:

H. T. RAIKES, A. SCONCE AND J. S. TORRENS,  
Esqs., Judges.

GOVERNMENT, RAMJOY DHOBÍ AND OTHERS

versus

MADHUBCHUNDER DHOBÍ.

**CRIME CHARGED.**—Severely wounding the prosecutor's daughter, Mookta Chookree Dhobani, and brother, Gobindo Dhobi, and sister-in-law, Dassi Dhobani, and nephews Huttoo and Jotoo, Chokras, with intent to murder.

**Committing Officer.**—Mr. C. B. Skinner, Joint-Magistrate of Magoorah.

Tried before Mr. W. S. Seton Karr, Sessions Judge of Jessore, on the 21st August, 1857.

Prisoner convicted and sentenced, by a majority of the Court, to transportation for life with reference to the atrocious character of the attack, and to the number of persons injured.

1857.

October 5.

Case of  
MADHUB  
CHUNDER  
DHOBÍ.

*Remarks by the Officiating Sessions Judge.*—The prisoner had been for some days absent from his home, which is close to that of the prosecutor, when shortly after his return without warning or previous altercation of any kind he rushed out armed with a *dao*,\* about 12 o'clock in the day, and attacked the brother of the prosecutor, Gobindo Dhobi, this person's wife, his

\* In weight 9 chuttacks.

infant child and his son, a boy, and prosecutor's own daughter. Some of the wounds inflicted by the prisoner were of a fearful description. A detailed account of them is given in the evidence of the Civil Assistant Surgeon, from which it appears that the recovery of *all* the sufferers, considering the chances of such wounds, must be considered very little short of miraculous. The pulsation of the brain in the boy was clearly seen. The cheek of the woman is cut clean through, and the hand of the man, Gobindo, was cut down to the bone, and will probably be stiff for the remainder of his life. The other injuries were (many of them) also of a severe nature. The only reason given for this savage attack is, that the prisoner imagined that Gobindo, the wounded man had instigated prisoner's father-in-law to refuse him his second daughter in marriage, his own wife having deceased some months since. But this is denied by the father-in-law himself, and even were it true, it cannot form the slightest palliation for an attack marked by such atrocity. After inflicting the wounds, the prisoner ran away with the bloody weapon in his hand for a mile, and was at last caught by the villagers who appear to have used sticks and stones in the attempt to disarm him, which may account for the bruises, scratches and superficial wounds on his body described by the Civil Surgeon. There is no question as to the truth of the case. The facts are deposed to by the sufferers by the witnesses Nos. 1 to 3, who arrived immediately after the infliction of the injuries, and saw the whole family weltering in their blood, and they are confessed by the prisoner himself before the Police, the Joint-Magistrate, and the Sessions Court. The attempt to murder is presumed from the savage nature of the attack especially on the boy and girl, and on the woman with the child in her arms, and from the very sight of the wounds only just healed. Had any one of the injured parties lost his or her life, I should have deemed it a duty to recommend a capital sentence. As it is, I feel it necessary to recommend that the heaviest sentence of which the crime admits, be passed on the prisoner, and that he be transported for the term of his natural life and kept to hard labor.

The prisoner was tried with the assistance of a Jury, who found him guilty.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. H. T. Raikes, A. Sconce and J. S. Torrens.)

*Mr. A. Sconce.*—I think that the sentence proposed by the

Sessions Judge in this very atrocious case should be awarded. Prisoner attacked, and wounded with a *dao* no less than six persons, and it would appear that, in the opinion of the Assistant Surgeon, the injuries sustained by four of these persons were of so grave a character that fatal consequences might have been apprehended. At the trial, the prisoner made no defence; he said, "Do as you please." It is true that no distinct cause is assigned for the commission of the act. It is supposed he may have been influenced by an impression that the prosecutor had persuaded his (prisoner's) father-in-law not to give him a second daughter in marriage upon the death of the first, but I would interpret the prisoner's intention from his wilful and savage acts, and convicting him of the crime charged, I would sentence him to imprisonment in transportation for life.

*Mr. J. S. Torrens.*—It appears to me, under all the circumstances of this case, that there is no necessity for inflicting on the prisoner so severe a punishment as imprisonment for his whole life. Desperate as the attack which he made on the wounded persons was, and severe as the wounds inflicted were, it is not shewn on the evidence that there was a pre-determination to take away life, nor is it shewn, except from the violence of the attack, that the prisoner had any intention to deprive the parties attacked of their lives. It is in evidence that he was subject to excitement arising from the use of opium, and in the absence of proof of a deliberate desire to deprive those he assailed of their lives, I would not award to him so heavy a punishment as where there is proof of such intention. Many precedents of the Court shew that imprisonment with labor and irons for a period of sixteen years only, has been awarded in cases of attempt to murder, even where there was full proof of the intent and premeditation shown. If there had been such proof in this case, I would certainly have agreed in the sentence recommended by the Sessions Judge, but as I would make a distinction where there is no such intent shewn, and also bear to some extent in mind the precedents to which I have referred, I would, in this case, award only twenty years' imprisonment with labor in irons.

*Mr. H. T. Raikes.*—The prisoner stood charged with severely wounding the prosecutor's daughter Mookta Chookree Dhobani and brother Gobindo Dhobi, and sister-in-law Dassi Dhobani and nephews Huttoo and Jhotoo Chokras, with intent to murder on the 5th of June.

The Sessions Judge says: "There is no question as to the truth of the case. The facts are deposed to by the sufferers, by the witnesses Nos. 1 to 3, who arrived immediately after the infliction of the injuries and saw the whole family weltering in their blood, and they are confessed by the prisoner himself before the Police, the Joint-Magistrate and the Sessions Court."

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The weapon used by the prisoner was a *dao*, and the Assistant Surgeon stated that Gobindo had seven incised wounds on various parts of his body, one on the right wrist divided the ulna, and has rendered the limb stiff for life, and another on the right shoulder four inches, and cut to the bone through a thick muscle, depriving him of the free use of his arm, a severe wound on the left side of the head four inches in length and in breadth, which reached the skull, and was dangerous from its proximity to the brain, and the possibility of inflammation. The Surgeon's opinion, on seeing the *dao* in Court, was that great force must have been used to cause such wounds by such a weapon. The woman Dassi Dhobani had a fearful wound, on the right cheek opening into the mouth throughout; another severe wound on the right shoulder, and another superficial one behind the ear, three and half inches long and three and half broad, "it was a slice taken off, in fact." The child in her arms had two severe incised wounds, and one on the head four inches long and one and half inches broad, "the bone of the skull was cut into, not to the brain." The little boy Huttoo had "one incised wound on the fore part of the head, two inches long, one and quarter broad, cutting through the bone and exposing the brain, the pulsation of which was visible through the wound." He had also a severe wound on a shoulder exposing the bone, and another on the neck. The little girl Mookta had two incised wounds, one on the left side of the head, the other on the left arm.

The Sessions Judge recommended that the prisoner should be transported for life, and Mr. Sconce thinks, "that the sentence proposed by the Sessions Judge in this very atrocious case should be awarded." Mr. Torrens, however, "in the absence of proof of a deliberate design to deprive those he assailed of life would limit the prisoner's sentence to twenty years' imprisonment with labor and irons." In consequence of this difference of opinion, the case has been referred to a third judge.

If I rightly understand the meaning of Mr. Torrens' remarks, he holds that there is no intent to murder proved against the prisoner, and on this ground he dissents from the sentence proposed. In that case, however, the wounding would only amount to aggravated assault, for which the law does not provide a period of imprisonment beyond seven years.

I am, however, of opinion that the intent to commit murder is fully proved against the prisoner. It is impossible to withstand the inferences which arise from the position of the wounds inflicted, and the weapon used on the occasion. The wounds are all in the region of the head and shoulders, or in the arms, which were doubtless raised in defence of the head; and considering the weapon employed, the reckless force with which it was

wielded, and the part of the body evidently aimed at, by the prisoner, there can be no reasonable doubt that he contemplated any thing short of the death of all those he attacked and mutilated. With reference, then, to the number of persons whose lives were all, more or less, endangered by the murderous assault of the prisoner, I concur with Mr. Sconce, in the sentence proposed by him.

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Case of  
MADHUB  
CHUNDER  
DHABI.

PRESENT:

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges*.

GOVERNMENT AND MAHOMEDALL SIRCAR

*versus*

SHEIKH EUSOFF (No. 5,) SHEIKH ANDAROO (No. 6.)  
SHEIKH NOSORUDDEE (No. 7,) RAM SINGH (No. 8,) Mymensingh.  
AND MUNGLE SINGH (No. 9.)

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, wounding Bechoo and Fotoo, and plundering therefrom cash and property, viz. cash Rs. 405, and property consisting of gold and silver ornaments worth Rs. 34 and *cassa* utensils valued Rs. 2-4, total Rs. 441-4; 2nd count, riotous assault with forcible plundering or destruction of property, not amounting to dacoity.

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Case of  
SHEIKH  
EUSOFF and  
others.

CRIME ESTABLISHED.—Riotous assault with forcible plundering.

Committing Officer.—Mr. C. E. Lance, Magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 30th July, 1857.

Prisoner's appeal rejected. Attention of Sessions Judge called to C. O. No. 80, 9th March, 1852, as to definition of dacoity.

*Remarks by the Sessions Judge.*—"The prosecutor states, that on the 7th Bysak last, at the dead of night he awoke from sleep on hearing the cry of people calling out "*Kalee, Kalee, Allee Allee*," and he observed from one hundred to one hundred and twenty-five men all armed and with fifteen or sixteen torches attacking his house, and attempting to force open the door of the house in which he slept, and when they had broken open the door he came out brandishing his sword, and gave the alarm, and as the neighbours approached, the assailants decamped; that the assailants severely assaulted and wounded his sons Mahomed, Bechoo and Fotoo, and plundered his property consisting of cash to the amount of Rs. 405, and gold and silver ornaments, &c.; that he recognized Fedatallee and prisoners Nos. 5, 6, 7 and 8 at the time by the light of the torches and that before day-break he went to the thannah and lodged a complaint, that during the enquiry being

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informed by Keena Chowkeedar that some of the dacoits who were wounded were at Boilor, he immediately informed the magistrate of the same, and the police apprehended prisoner No. 5, and one Fellanee (acquitted by the Magistrate.) Prisoner No. 5, stated before the Police and Magistrate that he accompanied Fedatallee and his companions for the purpose, as he was given to understand, of arresting some ryots of Fedatallee, and attacked the prosecutor's house on the advanced part of the night: that when a person came out of the house brandishing a sword they dispersed, and having had a fall while making his escape, was wounded by the said person on the back. In this Court he gives a different version of the matter urging that he accompanied Fedatallee to his former house, and in the early part of the night when passing close by the prosecutor's they were attacked by a body of ten or twelve men, and that a man wounded him on the back. In his defence, prisoner No. 6, stated before the Police and Magistrate and in this Court that he went with Fedatallee to his former residence for the purpose of bringing two wooden platforms and was attacked by the prosecutor in the way and assaulted. Prisoners Nos. 7, 8 and 9, denied the charge throughout. No. 7, urges that he is not aware why he has been implicated in the matter, and that his witnesses would prove his good character. Nos. 8 and 9, pleaded that they were employed during the night in guarding the moonsiff's cutcherry at Sumbhoogunge and that they have been implicated in the matter owing to a disagreement between the prosecutor and the moonsiff regarding the erection of a school-house.

Of the fact of the prisoners having attacked the house of the prosecutor with Fedatallee as their leader there is not a doubt. It would appear that enmity existed between the prosecutor and Fedatallee regarding certain foudary cases, and the latter with a view of revenging himself on his antagonist, collected a number of armed men and attacked the prosecutor's house, and severely assaulted and wounded his two sons and plundered his property. The prisoners were clearly and fully recognized by the prosecutor and witnesses at the time, and they have identified them before me, stating that they have known them for a long time. No property was, to be sure, found with the prisoners when they were arrested, but when they were recognized at the time of the attack and prisoner No. 5, having confessed before the Police and Magistrate and also from the tenor of No. 6's statement in this Court which indirectly amounts to an admission, the fact of no property having been found upon them cannot exculpate them, the property plundered having been moreover chiefly cash. Prisoners Nos. 5, 7, 8 and 9, examined a few witnesses to prove their defence, but their evidence is of no avail to them. The two witnesses examined by No. 5, were unaware of the points on which they were examined, No. 7 has examined five

witnesses, but they merely depose to prisoner's earning his livelihood as a tailor, but which is not sufficient to clear him. Prisoners Nos. 8 and 9, have also examined three witnesses, but their evidence is not sufficient to exculpate them, they (witnesses) state that the prisoners had to guard the moonsiff's cutcherry and were with them during the night, but cannot state whether they were in the place at the time that the outrage was committed which was within hail of the moonsiff's cutcherry. Further, witnesses Nos. 54 and 56, state that they were asleep until their turn came to guard the cutcherry. The outrage does not appear to me to amount to dacoity, the object being to attack and plunder the prosecutor owing to existing enmity between him and Fedatallee. It was, however, wanton and severe, considerable property having been plundered and the prosecutor's sons severely assaulted. The injuries sustained by the prosecutor's son Bechoo, the Civil Assistant Surgeon states, were of a very serious character and those received by Fotoo although not dangerous, were very severe, and had it not been for the energetic manner in which the prosecutor repelled his assailants, the probability is that they would have carried the attack to a still greater extent; I therefore convict the prisoners of riotous assault, with forcible plundering, and sentence them to be imprisoned for the period of seven (7) years each, with labor and irons, and further to pay to the prosecutor, jointly and severally the sum of Rs. 441-4, the amount plundered by them, under Act XVI. of 1850.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. B. J. Colvin and J. H. Patton.) The prisoners have not shown in their petition of appeal in what respects their conviction is erroneous. After examining the record, we see no reason to differ with the Sessions Judge. We accordingly reject the appeal. We observe, however, that although the Sessions Judge has convicted the prisoners of riotous assault with forcible plundering of property, he has, in his remarks, stated that the outrage did not appear to him to amount to dacoity, the object being to attack and plunder the prosecutor, owing to existing enmity. On this point we refer the Sessions Judge to Circular Order No. 80, dated 9th March 1852, which shows that if there be a *criminal intent* of committing a *robbery at the time of going forth* of the party, the crime amounts to robbery by open violence. It is not clear, therefore, why the Sessions Judge did not convict of this offence, as charged in the first count. His finding would appear to be inconsistent with his remarks.

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Case of  
SHEIKH  
EUSOFF and  
others.



PRESENT :

B. J. COLVIN AND J. H. PATTON, Esqs., *Judges.*

## GOVERNMENT AND SREEMUTTY BEWA

*versus*

NUBBODEEP MUNDUL (No. 2,) DINNOBUNDOO PRAMANICK (No. 3,) RAJMOHUN DOSS (No. 4,) CHINIBASH MUNDUL (No. 5,) GOUR MUNDUL (No. 6,) MODHOSUDUN MUNDUL (No. 7,) DOWAN PODDAR (No. 8,) AND LOTIFF SHEIKH (No. 9.)

Moorsheadabad.

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Case of  
NUBBODEEP  
MUNDUL and  
others.

Three prisoners convicted. Five released. Remarks on power of Sessions Judge to have disposed of the case, with reference to Cl. 1, Sec. 2, Regulation XVI. of 1825; no danger to life, or other such aggravating act of criminality having been shewn, as to take the case out of the jurisdiction of the Sessions Judge.

CRIME CHARGED.—1st count, dacoity with torture in which dacoity, property to the value of Rs. 123-8 was plundered and the person of the prosecutrix was burnt here and there with a torch; 2nd count, Nos. 2, 3 and 4, knowingly receiving and keeping in possession a portion of the property acquired by the aforesaid dacoity.

Committing Officer.—Mr. W. C. Spencer, Officiating Magistrate of Moorsheadabad.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorsheadabad, on the 2nd September, 1857.

*Remarks by the Officiating Sessions Judge.*—This dacoity occurred on the night of the 25th July last, and the Darogah hearing of it immediately, and having cause of suspicion against prisoner No. 5, Chinibas and two persons who lodged with him, and who were afterwards discovered to be prisoners Nos. 2 and 4, placed a guard at his house on finding they were all absent from that house. Early the next morning the prisoner No. 2 was apprehended by witness No. 3,\* and on his person was

\* Witness No. 3, Sibdial chow-keedar.

found 4 Co.'s Rs. and 7½ annas of pice, he confessed and named, amongst others, Goshain Doss and Ishwar, who being apprehended also confessed, and under Regulation X. of 1824, were made by the Magistrate approvers as witnesses Nos. 1 and 2 of the Calendar. The prisoner No. 2, also named prisoners Nos. 3, 4, 5 and 6, and on their being apprehended Nos. 3, 5 and 6 denied, but No. 4 confessed before the Magistrate and Darogah, and all being sent to the Magistrate No. 3, after denying his guilt before the Magistrate on the 27th idem, the next day offered in the presence of the Magistrate† to confess and accordingly did

† Magistrate's *robokaree* of 28th idem, page No. 93 of record.

so, naming among others the prisoner No. 9; information was sent the same day to the Darogah, and he on the 29th idem, apprehended No. 9, who denied his guilt and was sent the next day to the Magistrate. The prisoner, No. 7, was named by

Goshain Doss in his confession before the Darogah, and Goshain Doss having described No. 8, prisoner, Islam Burkundaz witness No. 9, seized him in his house, and Goshain Doss seeing him immediately recognised him; they were both apprehended, but have throughout denied their guilt.

The witnesses Nos. 1 and 2, deposed before me to the whole of the prisoners from Nos. 2 to 9,\* having joined them with one more person Sadoo (at present absconded) in having committed this dacoity; their evidence under Act II. of 1855 is legally available, and after cross-examination, and comparing their confessions before the Darogah and before the Magistrate with their statements before the Magistrate after being admitted as approvers and with their depositions before me, I am induced to believe that they have spoken truly, and I place confidence in all they say; they distinctly identify all the above prisoners.

The evidence against the prisoners may be classified as below viz. the witnesses Nos. 1 and 2, prove the prisoners Nos. 2, 3 and 4, to have been concerned in the dacoity; their evidence is corroborated by the mofussil and foudary confessions of prisoners Nos. 2 and 4, and the foudary confession of No. 3, prisoner, these confessions are proved to have been given by the prisoners voluntarily and freely, by the witnesses Nos. 14, 15, 17, 18, 20, 21, 23, 24, 26 and 27,† respectively; these confessions are further supported by the finding of the property Nos. 7 and 8, on the person of prisoner No. 2, as proved by witnesses Nos. 3 and 8,‡ and his acknowledging their being part of that stolen in the dacoity, by the finding of property Nos. 1 to 6, on the person of prisoner No. 3, as proved by witnesses Nos. 5 and 10,§ and his acknowledging them to have been part of that stolen in the dacoity, and by the finding of property No. 17, on the prisoner No. 4, and his acknowledging it to be part of the property stolen in the dacoity; the property Nos. 1, 2 and 3, are proved by the witnesses Nos. 10, 13 and 30,|| to be that of the prosecutrix, the other property Nos. 4 to 6 and 17, being rupees and pice are not capable of identification.

† Wit. No. 14, Abdool,  
 " " 15, Nobin,  
 " " 17, Chunder,  
 " " 18, Radhanath,  
 " " 20, Ishan,  
 " " 21, Shamachurn,  
 " " 23, Ahala,  
 " " 24, Eradut,  
 " " 26, Golam,  
 " " 27, Nytye.

‡ Wit. No. 3, Sibdyal,  
 " " 8, Khasroo.

§ Wit. No. 5, Gopal,  
 " " 10, Gonesh.

|| Wit. No. 10, Gonesh,  
 " " 13, Nilkomal,  
 " " 30, Allungo Bewa.

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The above prisoners Nos. 2, 3 and 4, plead *not guilty* before  
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me, but on the evidence above shewn, I convict them of having committed this dacoity with torture.

The witnesses Nos. 1 and 2, prove that No. 5, prisoner was concerned in the crime charged; their evidence is supported by the finding of a *kidya* in the prosecutrix's house dropped by the dacoits, as proved by the depositions of witnesses Nos. 29 and

\* Wit. No. 29, Poorno,  
" " 30, Allungo Bewa.

30,\* which *kidya* is clearly proved by witnesses Nos. 31, 32 and 33,† to belong to the prisoner No. 5, Chinibas and by the mofussil and foudjary confessions of the prisoners Nos. 2 and

† Wit. No. 31, Bromo,  
" " 32, Modoo Awruth,  
" " 33, Kalee Awruth.

4, and the foudjary confession of No. 3; he was also named throughout in the confessions and statements of the two witnesses Nos. 1 and 2.

The prisoner pleads *not guilty* before me, but makes no defence and calls no witnesses; on the above evidence, I convict him of having committed the dacoity with torture.

The witnesses Nos. 1 and 2, prove that the prisoner No. 6, Gour Mundul was concerned in this dacoity; their evidence is supported by the fact of their having mentioned this prisoner throughout in their confessions and in their statements before the Magistrate, and also by the mofussil and foudjary confessions of prisoner No. 2, in which this prisoner is mentioned as

‡ No. 36, Mohanund Dey,  
" 37, Gyanath,  
" 38, Boodhun,  
" 39, Sreenath.

one of the dacoits and by the fact proved by witnesses Nos. 36, 37, 38 and 39,‡ that though he was repeatedly called during the night of the dacoity, he was

found absent from his house.

The prisoner pleads *not guilty* before me, and though in the foudjary he asserted a quarrel with Goshain Doss, yet in this Court he abandoned that plea, and produced no witnesses to prove that alleged quarrel, I convict the prisoner also of having committed this dacoity with torture.

The witnesses Nos. 1 and 2, prove that the prisoner No. 7, Modhoo was concerned in this dacoity; he was named throughout by the witness No. 1, in his confessions and statement before the Magistrate, and was clearly identified by No. 2, witness Ishwar; he acknowledges before me that he did make voluntarily the defence before the Darogah in the mofussil on the

§ 46th page of record.

27th July,§ that he signed it himself and that he was stopped

the night of the dacoity by a pharidar in the Nyamaidan; he pleads before me that he was sick in his house the whole of that night, if, however, he was really in his house he could not have been stopped during the night by the pharidar; he pleaded before the Magistrate that Goshain Doss had a quarrel with him, but in

the mofussil he declared he did not know why Goshain had named him ; before me he named four witnesses to the truth of his illness but not having mentioned them previously, I am unable under Regulation IX. of 1796, to send for them now ; of the three witnesses named previously by him, viz. Nos. 49, 50 and 51, as witnesses to his character, he declines examining No. 49, declares No. 50, was not *the* Nymaye he named, and the Darogah was unable to discover No. 51 ; I did not consider it necessary to delay this case any longer by awaiting the arrival of the real Nymaye witness, as even if he did appear, his evidence alone would be insufficient to clear the prisoner.

I see no reason whatever to doubt the truth of the testimony of the witnesses Nos. 1 and 2, and I therefore convict this prisoner of having committed this dacoity with torture.

The witnesses Nos. 1 and 2 prove that prisoner No. 8, Doman Podar was concerned in this dacoity, the prisoners Nos. 2 and 4, in their mofussil and foudary confessions, and Goshain and Ishwar witnesses Nos. 1 and 2, in their mofussil confessions taken on their first apprehension, stated that a white coloured, "*gourborno*," Hindoo joined them in committing the dacoity ; this prisoner's appearance exactly answers that description as he is particularly light coloured. The witness No. 9, Islam burkundaz, in a clear consistent deposition states that he had remarked prisoner in the bazars and knew where he lived, though he was unaware of his name, and hearing from Goshain Doss of a light coloured Hindoo having been among the dacoits and having seen this prisoner and No. 7, Modhoo prisoner walking that morning together, he went to the prisoner's house, seized him, and brought him before Goshain Doss who instantly recognised him as the person he had described ; the witness Ishwar also on seeing him recognised him as the man he had referred to ; I see no reason to doubt their evidence, they had no quarrel with the prisoner, and no reason is shewn why they should have falsely sworn to him ; the recognition by Goshain Doss also was made before he had been offered pardon by the Magistrate.

This prisoner's vakeel urges on the Court that the witnesses Nos. 1 and 2, have given discrepant testimony, but he has not shewn what this discrepancy consists in, and I can discover no material discrepancy, I therefore convict the prisoner of having committed this dacoity with torture.

The witnesses Nos. 1 and 2 prove that the prisoner No. 9, Lotiff Sheikh was concerned in this dacoity. They and the confessing prisoners Nos. 2 and 4 were unacquainted with his name, but described him as a Mussalman with a very black-beard, and the prisoner's beard is remarkably black and, as mentioned in the mofussil confession of No. 2, prisoner, it is very short, the witnesses Nos. 1 and 2, identify him as the Mussalman,

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and their statement is supported by the prisoner No. 2, Nubbodeep's mofussil confession, where he says that, on their return from the dacoity the prisoner No. 5, put the Mussalman and prisoner No. 3, Dinoo into a garden, while Dinoo in his confession before the Magistrate stated that he and No. 5, and the prisoner No. 9, (naming him) went into a garden on their return. It appears that the prisoner No. 3, Dinoo was the only one of the dacoits acquainted with the prisoner No. 9, and the statement in his confession regarding the prisoner No. 9, is remarkably borne out by the evidence of the witness No. 32, who lives in the house of the prisoner No. 5, and who states that two days previous to the dacoity, Dinobundu the prisoner No. 3, brought the prisoner No. 9, to that house, and that he remained there that evening. I see no reason to doubt the evidence of the witnesses Nos. 1 and 2, as to the identity of this prisoner.

The prisoner pleads *not guilty* before me, but can give no reason why those witnesses should swear falsely against him, and in the foudary Court he pleaded, but was unable to substantiate his plea, that he had a quarrel with the Gowallas of the village, and the prisoner No. 3, being a friend of theirs had falsely implicated him; this plea is absurd. I convict the prisoner of having committed this dacoity with torture.

The deposition of the prosecutrix, the *sooruthal* of her wounds

|                      |                                 |
|----------------------|---------------------------------|
| Wit. No. 10, Gunnes, | as certified by witnesses Nos.  |
| „ „ 13, Nilkomul.    | 10 and 13,* and the evidence of |

that No. 13, prove that the dacoits tortured the prosecutrix by burning her with *mussals* in two or three places, the case being one therefore beyond my competence finally to decide, I submit it for the orders of the Superior Court, and recommend a sentence of imprisonment for life in transportation beyond the seas being passed upon all the prisoners from Nos. 2 to 9.

The property recovered is to be given to the prosecutrix. This case was tried under Act XXIV. of 1843.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. B. J. Colvin and J. H. Patton.) Their confessions warrant the conviction of prisoners Nos. 2, 3 and 4, but the circumstances set forth at length by the Officiating Sessions Judge do not supply sufficient corroboration of the evidence of approvers against prisoners Nos. 5 to 9, whom we accordingly acquit. It appears to us that there was nothing in this case to take it out of the jurisdiction of the above officer, for the burning is not shown to have been such as to endanger life, nor has any other aggravating act of criminality been described, so as to bar the exercise of the power of punishment conferred upon Sessions Judges by Clause 1, Section 21, Regulation XVI. 1825. We sentence the prisoners, Nos. 2, 3 and 4, to fourteen years' im-

prisonment with labor in irons, and two years additional in lieu of stripes, *i. e.* a total of sixteen years, in banishment. We direct the release of prisoners Nos. 5, 6, 7, 8 and 9.

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Case of  
NUBBODEEP  
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others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

FAKEER PATTHUR (No. 4.) LUKA MAHITEE (No. 5.)  
AND JADOO JANA (No. 6.)

Midnapore.

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Case of  
FAKEER  
PATTHUR and  
others.

CRIME CHARGED.—1st count, Nos. 4 to 6, dacoity on 27th December, 1845, in the house of Chandkoour Kusbee, inhabitant of Raokoonpore, thannah Nagoon; 2nd count, dacoity on 29th January, 1851, in the house of Kooar Narain Doss Mahapathur, master of Bheekun Jana (plaintiff) inhabitant of Burtollah, thannah Nagaon; 3rd count, with being by profession dacoits and having belonged to a gang of dacoits.

Committing Officer.—Captain C. H. Keighly, Assistant General Superintendent, Joint-Magistrate of Midnapore.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Midnapore, on the 24th August, 1857.

*Remarks by the Officiating Additional Sessions Judge.—First*

\* Witness No. 1, Bheem Mahitee.

*Count.* One approver\* crim-  
minates the three prisoners

in this dacoity; and the truth of his evidence is confirmed by the original proceedings of the case. The occurrence of the dacoity was concealed at first; but the Darogah having heard of it proceeded to the spot, and immediately examined the owner of the house and Rughoo Paharee, who had slept in the house on the night of the dacoity. The former stated that she had recognized prisoner No. 5, and witness No. 1, as they were attacking her, and prisoners Nos. 4 to 6, as they were leaving the house. Rughoo Paharee, stated that he had recognized prisoner No. 5, and witness No. 1. The witness and the prisoners were apprehended; the owner of the house and Rughoo Paharee repeated their statements before the Magistrate, who eventually released the accused.

Prisoners  
convicted, as  
the evidence  
of the appro-  
ver witnesses  
was duly cor-  
roborated. Re-  
marks on se-  
condary evi-  
dence, and as  
to how Ses-  
sions Judges  
should note  
their refer-  
ences to re-  
cords.

*Second Count.*—Two approvers†, criminate the three prisoners

† Witness No. 1, Bheem Mahitee.

" " 2, Bipr Mahitee.

in this dacoity; and their  
evidence is also satisfactory  
corroborated by the former

record. Madoo Mahitee and Shodee Raool, who were wounded in

1857. the dacoity, confessed in the mofussil, and criminated the three prisoners and the two witnesses, Shadee Raooleffected his escape before he could be sent into the Magistrate; but Madoo Mahittee repeated his confession before the Magistrate, naming prisoner No. 5, and the two witnesses, and was eventually convicted at the Sessions.

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Case of  
FAKEER  
PATTHUR and  
others.

*Defence of the prisoners.*—They deny their guilt. No. 4 avers that witness No. 1, had lent money to him; No. 5, who is the brother of witness No. 1, avers, that he used to live with his brother, but that as they were constantly quarrelling they separated; that he refused to give false evidence in a complaint preferred by his brother; and that witness No. 2, having erected a house in Bajerpore, he, prisoner, and the villagers destroyed it to compel him to remove from the village; No. 6 avers, that he gave a calf to witness No. 1, to take care of, that the zemindar's people seized it, and that that witness entertains resentment against him, the prisoner, for allowing it to be taken; and that witness No. 2, has the same cause of enmity against him as against prisoner No. 5. The witnesses of the prisoners give them a good character.

I convict the three prisoners of having belonged to a gang of dacoits and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners are identified by the approver-witnesses as having been engaged with them in committing the dacoities entered in the 1st and 2nd counts.

The first count is proved by the evidence of the witness No. 1, who implicates all the prisoners; and his original confession, taken previous to their apprehension, is corroborated by the deposition of the prosecutrix, Chandkooar Kusbee, taken in 1845, at the time the dacoity occurred; and who then recognised the prisoners and the approver-witness. It is further corroborated by the statement of Rughoo Paharee, an inmate of the house, who then identified the approver-witness and the prisoner No. 6.

The second count is proved by the evidence of both approver-witnesses, who implicate all the prisoners; and the confessions of those witnesses, taken previous to the apprehension of the prisoners, are corroborated by the facts stated and parties named in the confessions made by Madoo Mahittee and Shadee Raoul, two of the dacoits, who were captured by the villagers at the time, and who named the prisoner and the approver-witnesses as forming part of the gang.

From the record, submitted to this Court, it does not appear whether Chand Kooar and Rughoo Paharee are alive or not; and no reason why they were not summoned to identify the prisoners is assigned. Whenever primary evidence of this kind can be procured, it should be made use of instead of the secondary

evidence on the record, and whenever the latter alone is used, the reason why primary evidence is not available, should be stated.

In the 3rd para. of his report the Sessions Judge states that Mudun Mahitee repeated his confession to the Magistrate, but he has omitted to note in what page of the record this confession is to be found, and it is not among the papers submitted to the Court. The Judge should be careful to cite the pages of the records he refers to, in support of his remarks.

We convict the prisoners, under Act XXIV. 1843, and sentence them, under the same Act, to be transported for life with hard labor.

1857.

October 6.

Case of  
FAKEER  
PATTHUR and  
others.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

BECHOO DOSS.

Midnapore.

1857.

October 6.

Case of  
BECHOO  
Doss.

CRIME CHARGED.—1st count, dacoity on the 31st March, 1849, in the house of Bishnath Sawunt inhabitant of Burampore, thannah Bagoan; 2nd count, dacoity on the 7th February, 1853, in the house of Bechoo Satna, inhabitant of Sindoomoory, thannah Subung; 3rd count, with being by profession a dacoit and having belonged to a gang of dacoits.

Committing Officer.—Captain C. H. Keighly, Assistant General Superintendent and Joint-Magistrate of Midnapore.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Midnapore, on the 18th August, 1857.

*Remarks by the Officiating Additional Sessions Judge.*—Two

\* Witness No. 1, Nobeen Mahitee,  
" " 2, Radhoo Mahitee.

approvers\* describe the particulars of the dacoity referred in the first count, and

depose that the prisoner was engaged in it with them. The occurrence of the dacoity was reported at the time, but no one was suspected.

One approver† deposes that the prisoner was engaged with him

† Witness No. 3, Mudhoo Lekha.

in the dacoity referred to in the second count. It ap-

pears from the original proceedings that Goburdhun Doss was apprehended some days after the occurrence, and that he confessed before the Darogah and stated that the prisoner was also engaged. The prisoner was apprehended, but released in the mofussil.

Prisoner ac-  
quitted. Re-  
marks on evi-  
dence of ap-  
prover - wit-  
nesses and  
on reference  
to bad charac-  
ter of pri-  
soner.



1857.

October 6.

Case of  
Васноо  
Doss.

Two witnesses\* have been examined to prove that the prisoner is a bad character; but their testimony is not of much value.

The committing officer has specified several other dacoities in which the prisoner was arrested, and has certified that, to the best of his belief, the approvers could not have colluded.

Prisoner states in his defence that *after* his apprehension he informed the jail Darogah that the approvers intended to escape. He admits that the circumstance was not reported. Three witnesses examined on his behalf depose that he is a suspicious character.

I convict the prisoner of having belonged to a gang of dacoits and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) On the *first* count, the evidence of the approver-witnesses is not corroborated in any way; moreover their confessions, implicating the prisoner were taken *after* his apprehension. We consider the commitment on this count quite insufficient.

On the *second* count, there is the evidence of one approver witness. It is, as the committing officer remarks, clear and succinct as to the *particulars* of the dacoity; but it presents no peculiar or prominent features corroborative of the special point of the *identity* of *this* prisoner, nor is it more precise as to this individual than as to others named in it.

The confession of Sreekunt Tewaree taken at the time of the dacoity charged in this count does *not* mention this prisoner, and the only corroboration remaining in evidence on the record is, that the prisoner is named in the confession of one Goverdhun.

The committing officer, however, relies on the evidence to the *bad character* of the prisoner being sufficient to support the evidence of witness, No. 3, and the confession of Goverdhun, to such an extent as to justify a conviction; and he cites certain cases, decided in this Court, in confirmation of his view.

We find there is *no* previous conviction of this prisoner on record at all: and we are surprised that the committing officer should cite the sentence by a Sessions Judge in the way he has done, when that sentence has been *reversed* by this Court. The mere fact of being apprehended and tried is no legal proof of itself of bad character. Any *final conviction* may or may not be so, according to the circumstances of the case; but, as before remarked, there is no such conviction on the record here. The evidence of witnesses Nos. 5 and 6, is this, viz. that ten years before prisoner resided in their village; that he was once or twice in *hajut*; and that he worked as a laborer.

It now remains to refer to the cases decided in this Court, cited by the committing officer, and we would remark, that this

Court would have been saved some *needless* trouble, had the special points of analogy and similarity between this, and each of those cases, been precisely and distinctly brought before our view, instead of being cited generally, and it being left to us to do the duty of the committing officer and Sessions Judge, viz. to discover and record those special points where they exist. In this case, however, they do *not* exist at all.

(Bhogoban Ghose's case. Part II. Vol. V. 1855, page 111.) In that case there was direct evidence to that prisoner having been "addicted to dacoity and other crimes" and receiving a wound in his leg in a dacoity. Further, page 114 in that case shows three witnesses to have borne evidence as to that prisoner's participation in seven dacoities. There is no such evidence in the case now before the Court.

(Bhagbut Bagde's case. Part I. Vol. V. 1855, page 120.) The Nizamut Adawlut in the case of that prisoner do *not* refer to *bad character*, and the evidence (lines 10 to 22, page 125) was far stronger in that case than in this.

(Haroo Sirdar's case. Part I. Vol. V. 1855, page 699.) A reference to the last two lines of page 717 in that case will show that the Nizamut Adawlut relied more "on the evidence of the approvers" being "confirmed as it has been with respect to the other prisoners;" and that confirmation is referred to in these words "the evidence of the three approvers" is credible and trustworthy against *all* "the prisoners." "It has received corroboration in a remarkable degree," &c., (V. lines 30, 32, and 33, page 717.)

(Nobin Ghose Gwala's case. Part II. Vol. V. of 1855, page 197, not 205, as cited by the committing officer.) In that case the evidence of *two* approvers was corroborated by "the fact of his having been *twice named* by persons apprehended in dacoities which occurred *several years before* the approvers denounced him." There are not similar or analogous features in this case.

We consider the evidence insufficient to warrant a conviction, and acquit the prisoner of the charge on which he stands convicted by the Sessions Judge, and we order his release.

1857.

October 6.

Case of  
BECHOO  
DOSS.

## PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Midnapore.

BHOGE SAWUNT (No. 5.)

1857.

October 7.

Case of  
 BHOGE  
 SAWUNT.

Prisoner convicted. Re-  
 marks on se-  
 condary evi-  
 dence, and on  
 examination of  
 witnesses.

**CRIME CHARGED.**—1st count, dacoity on 31st March, 1849, in the house of Bissonath Sawunt inhabitant of Beerampore, thannah Bagnan, zillah Howrah; 2nd count, dacoity on 15th May, 1849, in the house of Needheeram Ghurrooe, son of Narayn Ghurrooe, inhabitant of Khundkhollah, thannah Purtabpore; 3rd count, dacoity on 23rd July, 1849, in the house of Bissumbhur See, nephew of Bindabun See, inhabitant of Autbooreeah, thannah Purtabpore; 4th count, with being by profession a dacoit and having belonged to a gang of dacoits.

Committing Officer.—Captain C. H. Keighly, Joint-Magistrate of Midnapore.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Midnapore, on the 19th August, 1857.

*Remarks by the Officiating Additional Sessions Judge.*—First count, three approvers\* criminate the prisoner in this dacoity.

Witness No. 3, did not mention his name in this dacoity in his original confession; and some degree of doubt must attach to his evidence in consequence: but it is possible that the omission may have been the result of forgetfulness. The occurrence of the dacoity was reported at the time; but the original proceedings afford no other corroboration.

Second count, two approvers† criminate the prisoner in this dacoity. Witness No. 3, was

† Wit. No. 2, Nobbeen Mahitee, arrested at the time on suspicion;  
 " " 3, Pershad Khaura. but there is no other corroboration in the original proceedings. Shaphul Mahitee, in a confession taken at Hooghly on the 8th March, 1857, before a subordinate of the dacoity Commissioner, corroborates the evidence of the witness in regard to the prisoner's presence in this dacoity.

Third count, prisoner is criminated in this dacoity by witnesses Nos. 1, 4 and 5; but the two latter did not name him as

|                              |     |
|------------------------------|-----|
| * Nizamut Adawlut Reports,   |     |
| 8th February, 1856, page 373 |     |
| 14th " " "                   | 404 |
| 9th August " "               | 207 |
| 18th " " "                   | 235 |
| 25th " " "                   | 270 |
| 20th October " "             | 811 |
| 20th " " "                   | 828 |
| &c. &c. " "                  |     |

engaged in this dacoity in their original confessions. It appears from the original proceedings of this case, that Soondur Koomar and Madoo Sawunt, who were arrested shortly after the occurrence, confessed before the police and stated that the prisoner had accompanied them. The Sirdar

1857.

October 7.

Case of  
BHOGEE  
SAWUNT.

and thirteen other dacoits have been convicted\* of this dacoity.

Prisoner states in his defence that he has been falsely accused owing to the enmity of witness No. 2, who escaped from jail in November, 1855, and who was re-apprehended in the following June through information furnished by him, the prisoner in this case. This plea is untenable, because the prisoner was first denounced in June, 1855, by witness No. 3. Prisoner's witnesses prove nothing in his favour.

The committing officer has specified another case of dacoity and a heavy case of burglary in which the prisoner was arrested, and has certified that collusion among the approvers was almost impossible.

I convict the prisoner of having belonged to a gang of dacoits and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The 1st count against the prisoner is proved by the evidence of the approver-witnesses, whose testimony has been received in other cases by this Court as worthy of credit.

The 3rd count is proved by the evidence of the witnesses, whose general confessions were taken *previous* to the apprehension of the prisoner, and these are *corroborated* by the facts stated in the confessions of two of the dacoits wounded, and captured at the time.

We convict the prisoner, under Act XXIV. 1843, and sentence him to transportation for life with hard labour.

In the 3rd para. of his report, the Additional Sessions Judge refers to the confession of Shaphul Mahitee taken before the Commissioner on 8th March, 1857, (or more correctly the 10th.) The Court wish to be informed why Shaphul Mahitee was not made a witness in this case, for if his attendance could have been procured, the record of his confession only ought not to be admitted in evidence against the prisoner. If he be dead or transported, or if his attendance from any other cause could not be secured, a specific remark to that effect should have been made in the committing officer's abstract of information.

This rule should be adhered to, in all future cases, both by the Commissioner and his subordinates, and by the Sessions Judge.

1857. The Additional Sessions Judge is requested, in future, to designate officers, under the dacoity Commissioner, by their official titles, and not by the vague appellation of "subordinate."

October 7.

Case of  
BHOGEE  
SAWUNT.

The Court observe that the evidence of the approver-witnesses might have been more carefully tested had they been more closely examined as to some of the prominent incidents specifically mentioned in the confessions of Soondur Koomar and Madoo Sawunt.

PRESENT :

A. SCONCE AND J. S. TORRENS, Esqs., *Judges.*

GOVERNMENT

*versus*

Mymensingh.

SHEIKH KALOO.

1857.

October 7.

Case of  
SHEIKH  
KALOO.

CRIME CHARGED.—Perjury, in having on the 22nd September, 1855, deposed, under solemn declaration taken instead of an oath before the Deputy Magistrate, Baboo Joychunder Goocho, that he was not related to Assanoollah, such statement being false and having been made on a point material to the issue of the case.

Prisoner acquitted; perjury in regard to his connection with a prosecutor not being proved. Remarks as to who should administer the prescribed affirmation.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Moulvee Abdool Kurreem, Law Officer

of Mymensingh.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 20th June, 1857.

*Remarks by the Sessions Judge.*—This is another case of perjury, which I regret to observe is so prevalent in this district. It would appear that the prisoner was named as witness in a case pending in the Foujdary Court when he deposed before Baboo Joychunder Goocho, Deputy Magistrate, that he bore no relationship to Assanoollah, the prosecutor, in that case, which being proved to be false, he was committed to this Court on a charge of perjury. The perjury was detected by two of the defendants in that case, when orders were issued to the police to investigate the matter. The prisoner there stated that he did not understand the word "*shomparko*" and consequently answered in the negative. In this Court he made the same plea, and added that the mohurir, who took down his depositions, omitted to write down the relationship. He, however, confessed every where that he was married to Assanoollah's cousin.

I am of opinion that the perjury has been clearly brought home to the prisoner. He admits that he married Assanoollah's

lah's cousin, which fact is also corroborated by the evidence of witnesses Nos. 4, 5, 6, 7, 8 and 9. Before the Law Officer the prisoner stated that he did not understand the question put to him, but it appears from the evidence of the mohurir, who took down his deposition, that the question was clearly explained to him and that the answer was recorded just as the prisoner stated. Before me he varies the nature of his defence, urging that the mohurir omitted to write down the relationship, but of this he declined to adduce any proof. Concurring therefore with the verdict of the assessors, who aided me in the trial, I convict the prisoner of perjury and sentence him to (3) three years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) This prisoner on the 22nd September, 1855, having been examined as a witness in a case of assault preferred by Koodrutoollah and Assanoollah, described what he saw; and at the conclusion of his deposition, on being asked whether he had any connexion (*ilaka shomparkeo*) with Assanoollah, he answered, no. Upon this, the charge of perjury is founded. Prisoner is charged with falsely swearing that he was not related to Assanoollah, and having been convicted by the Judge, is sentenced to three years' imprisonment.

We are not satisfied that legal perjury has in this case been committed. The question put to prisoner was very general, and we are not satisfied that it was his intention deliberately to deny his connexion with Assanoollah, if what is considered the relationship between them, was contemplated by him as such at all. Of the witnesses examined two say that prisoner married Assanoollah's sister. Others seem to say that the person whom prisoner married is not nearer than Assanoollah's eldest uncle's daughter. This may be the case; but no details were entered into in examining the witnesses; and as already said, we are not satisfied that the crime of perjury has been committed by the prisoner, and we acquit him thereof.

We observe that a *peon* is said to have administered the oath to Kaloo when he was examined as a witness; but obviously a peon is not a person fit to be employed in this matter. The officer who writes a witness's deposition, should administer the prescribed affirmation; and in future, the Magistrate will be careful to conform to this better practice.

1857.

October 7.

CASE of  
SHEIKH  
KALOO.

**PRESENT :**

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

**versus**

Midnapore. NURSINGH MANA (No. 6.) KEENOO MANA (No. 7.)  
AND MODHOO BERHA (No. 8.)

1857. CRIME CHARGED.—1st count, Nos. 6, 7 and 8, dacoity on

October 10.  
Case of  
NURSINGH  
MANA and  
others.

Prisoners Mohur, thannah Sabung; 4th count, No. 6, dacoity on 4th convicted. Remarks July, 1851, in the house of Seetoo Mahitee inhabitant of Neem- points on ky Mohur, thannah Sabung. 5th of No. 6, 4th of No. 8, and the approver's evi- 3rd of No. 7, with being by profession dacoits and having be- dence, and on longed to a gang of dacoits. manner in Committing Officer.—Captain C. H. Keighly, Assistant da- which the coity Commissioner of Midnapore. case was re- Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions ferred.

*Remarks by the Officiating Additional Sessions Judge.*—Two

\* Wit. No. 1, Rughhoo Doss,  
" " 2, Modhoo Lekha.

in the first count. Their evidence is corroborated by the original proceedings in the case in regard to the occurrence of the dacoity and in regard to a remarkable circumstance, viz. the sudden death from disease of one of the gang as they were leaving the house after committing the dacoity. Witness No. 2 did not name prisoner No. 8, in his original confession, nor at the Sessions until the omission was pointed out.

In corroboration of the evidence of the two approvers with reference to the second count, it appears from the original proceedings that prisoner No. 7 was seized in the act; that he confessed unreservedly before the Police, and stated that prisoners Nos. 6 and 8, had accompanied him; that he made a partial confession before the Magistrate; and that he was convicted in a charge of burglary. The owner of the house and Pran Ghurra who cohabited with her deposed that they had recognized prisoners Nos. 6 and 8. The evidence of the approvers shows that the crime amounted to dacoity as defined in Clause

1, Section 3, Regulation XXXIII. of 1803; and one\* of them

\* Witness No. 1, Ruggahoo Doss. was convicted of that crime on this count on the 27th of March,† last.

† Nizamut Adawlut Reports, page 412. In corroboration of the evidence of the two approvers in regard to the third count, it appears that the owner‡ of the

‡ Witness No. 3, Sreemuttoo Durpodee Bewah. house deposited on the day after the occurrence that she recognized prisoners Nos. 6 and 7, by the light of a torch, which statement she repeated before the Magistrate, and recently before Capt. Keighly. At the Sessions, she positively affirmed that she had not recognized any one; but when her former depositions were brought to her notice, she admitted that they were correct. It is most likely that this witness has been tampered with.

In corroboration of the evidence of the approver in regard to the fourth count, it appears that prisoner No. 6, was apprehended in consequence of the owner§ of the house having stated that he had recognized him; but he was released by the police. This witness has now repeated his former statement. Two other|| witnesses gave similar evidence at the time of the occurrence; and now repeat it. There are some suspicious circumstances in this case, but not sufficient to throw discredit on the evidence of the approvers. Prisoner No. 6, is a first cousin of the owner of the house, and father-in-law of witness No. 7.

§ Wit. No. 4, Teetoo Mahitee. || Wit. No. 6, Mudu Bhoonya, „ „ 7, Nursingh Jana.

The prisoners deny their guilt, their witnesses do not establish any thing in their favor. I convict the three prisoners of having belonged to a gang of dacoits and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) It will be convenient, from the nature of this case, to record our remarks with reference to each prisoner, separately.

The prisoner No. 6, *Nursingh Mana*, was apprehended on the 14th August, 1856. He is charged on four special counts of dacoity, and on the general one of belonging to a gang of dacoits. The evidence against him on the first count consists of that of the approver-witnesses Nos. 1 and 2. The original confession of witness No. 1, was made after the apprehension of this prisoner; the date of that confession being 13th December, 1856; and although the Assistant Superintendent certifies to these witnesses and prisoners having been kept separate, we are not disposed to rely on the evidence of witness No. 1, under the circumstance referred to. This objection, however, does not apply to witness No. 2. The Sessions Judge and committing

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October 10.

Case of  
NURSINGH  
MANA and  
others.



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October 10.

Case of  
NURSINGH  
MANA and  
others.

officer refer to the peculiar circumstance of witnesses Nos. 1 and 2, both mentioning the sudden death of one of the dacoits after the dacoity, and of that fact, corroborated by the police records of the time, as demanding credence for the testimony of the approver-witnesses. But this mention of an *incident* of a dacoity is a support more to the fact of the dacoity and to an approver's testimony to *that fact*, than to his testimony, as to the *identity* of a particular individual as concerned in it, which is the point to be *clearly and satisfactorily* established. On the *second* count, the original confession of the approver-witness No. 2, is, as before remarked, *prior* to the prisoner's apprehension; it agrees with his depositions on the trial; and is corroborated by the evidence of Pran Dhaná and Tara Kusbee on the record of the Magistrate's proceedings at the time. This evidence will suffice for the prosecution, although it should have been clearly shewn why the primary evidence of Pran Dhaná and Tara Kusbee was not available at the trial. On the *third* count, the evidence of witness No. 2, may be accepted; as it is corroborated by the thrice repeated testimony of Durpodee Bewa. We do not consider that before the Sessions this witness distinctly repudiated her previous testimony, but rather retracted her previous repudiation. The final statement to the Sessions is precisely that. On the *fourth* count the evidence of witnesses Nos. 2 and 4 is sufficient. This prisoner in his defence does not ascribe any motive of enmity to the witnesses for the prosecution; and his own witnesses do not clear him as to doubts on his character.

Prisoner No. 7, *Kenoo Mana*, apprehended on the 25th July, 1856, is charged on the 1st, 3rd and 4th special counts and on the general count. The evidence of witness No. 2, is good against him on the *first* count; (the evidence of witness No. 1, being rejected for the reasons given in the case of prisoner No. 6;) that of witnesses Nos. 2 and 3, against him on the *third* count, and that of witnesses Nos. 2 and 6, on the *fourth* count. We observe that he was not committed on the *second* count, because he had been convicted and sentenced on it before. This reason for his not being committed on it, should have been specifically noticed by the Sessions Judge. The prisoner in no way substantiates his defence, either of *alibi* or good character; indeed those witnesses whom he calls only to the latter point before the committing officer, he calls for the *first* time to the former point before the Sessions. This also should have been noticed by the Sessions Judge.

Prisoner No. 8, *Modhoo Behra*, apprehended on the 19th April, 1857, is charged on the 1st, 2nd and 3rd special counts, and on the general one. On the *first* count, there is the evidence of witnesses Nos. 1 and 2, both of whom made their original confessions *previous* to prisoner's apprehension. But

No. 2 did not mention this prisoner in that confession. He, however, clearly identified him from a number of others on his apprehension. We think the evidence on this count weak; the testimony of the approver-witness No. 1, being uncorroborated by other independent evidence. On the *second* count, the Sessions Judge states that Pran Dhana and Tara Kusbee "*deposed that they had recognized prisoners Nos. 6 and 8.*" Neither, however, of the persons named do mention prisoner No. 8, but prisoner No. 7, in their depositions, on the original record No. 399; and, as before observed, there are no other depositions of their's before us. On the *third* count, the evidence of witnesses Nos. 1, 2 and 3, is sufficient. The prisoner establishes no special defence, nor his plea of good character.

We convict prisoners Nos. 6, 7 and 8, under Act XXIV. of 1843, and sentence them to be transported for life, with hard labor under the same Act.

The Sessions Judge's letter of reference is meagre, and incorrect, and he should more specially and distinctly notice the pleas of prisoners in defence; and more clearly give his opinion on the *sufficiency* or otherwise of material points of evidence.

1857.

October 10.

Case of  
NURSINGH  
MANA and  
others.

PRESENT:

A. SCONCE AND J. S. TORRENS, Esqs., *Judges.*

GOVERNMENT

*versus*

RAJCOOMAR ROY.

Backergunge.

1857.

CRIME CHARGED.—Affray attended with the severe wounding of Khas Mahomed and others with gun-shots.

CRIME ESTABLISHED.—Affray with wounding.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 22nd May, 1857.

*Remarks by the Sessions Judge.*—This is the third time that this case has been before the Court, the particulars of the case are given in my remarks upon the trial of Issurehunder Roy, an extract from which is subjoined.

"On the 31st October, 1855, the Darogah of thannah Kewaree was on duty in the Raikatee village, a petition was presented to him by one Nilmonnee Dhopee, stating that the prisoner No. 6, and Rajcoomar Roy zemindars of Raikatee had collected a very large number of *lattials* with the intention of breaking up a road to the west of the petitioner's house as

Prisoner convicted. Remarks on summoning of witnesses for defence, and on pleas in appeal based upon all witnesses named for defence not being summoned.

October 12.

Case of  
RAJCOOMAR  
ROY.

1857.

October 12.

Case of  
RAJCOOMAR  
Roy.

also to plunder the house of a co-sharer in the zemindary. Madhubnarain Roy the Darogah with several burkundazes and some of his private servants immediately repaired to the scene of strife. On arriving at the houses of the Raikattee zemindars, which are brick built and some of which are upper-storied, the Darogah found a large body of *lattials* standing prepared to fight both in the court yards, the lower verandahs, the upper story verandahs and roofs of the houses of the prisoner No. 6, and Rajcoomar Roy and others on the one side and of Madhubnarain Roy on the other side. The police called upon the parties to desist and to respect the law, but without effect; the battle opened with a shower of brick bats from both sides this was followed by a hand-to-hand fight between the partisans of both parties. Suddenly two reports of guns were heard proceeding from the direction of Madhubnarain's house and a rumour was spread that some men had been wounded, this ended the battle, the fighting men on either side retreated within the *pucka* houses of their respective employers, the gates were barred and closed to prevent the ingress of the police. In such a case it is useless to expect that any of the neighbours should give evidence. The zemindary of the prisoner No. 6, and his co-sharers extends for some distance round the scene of affray.

The prisoner, Rajcoomar Roy, is one of the zemindars of Raikattee, he is a man of much influence, and this influence he has used to the utmost in first avoiding the processes issued to enforce his attendance before the Magistrate, and secondly, in procuring, I might almost say suborning, documentary and oral evidence in support of the *alibi* set up by him as his defence.

That the prisoner was present in the affray, that he did nothing towards preventing it, but on the contrary by his presence and countenance encouraged it, are facts which, in my opinion, are fully established by the evidence of Rubbee Singh, Surroop Singh, and Pulwan Singh burkundazes of thannah Kewaree and of Bungsee Buddun Sen, whose testimonies are corroborated by the evidence of the Darogah, Raizul Eslam, the remaining witnesses who accompanied the Darogah have been bought off. It is creditable to the burkundazes that they have preferred speaking the truth in this case to their own interests. The defence of the prisoner is, that before, on, and after, the day of the affray, he was in Calcutta.

I cannot believe this defence: it is notorious, that a wealthy native zemindar has little difficulty in procuring any number of witnesses to depose to an *alibi*. Witnesses may and generally do lie in this country, but documentary evidence ought not to lie. The witnesses adduced by the prisoner to depose to his presence in Calcutta at the time of the affray have done what they were paid for to do. The witnesses from Calcutta are not respectable, and the accuracy with which deposing in 1857,

they can remember the dates in 1855, on which they saw the prisoner in Calcutta in comparison with the inaccuracy with which they depose to more recent events which ought to be within their cognizance, make their testimonies untrustworthy. The story of the prisoner is this that he left Raikattee for Calcutta on or about the 9th of Kartick, and that he returned on the 30th of Kartick, the affray took place on the 15th of Kartick, 1262, corresponding with the 31st of October, 1855.

The prisoner states that he went to Calcutta for medical advice, that he petitioned the Superintendent of salt chowkies in the 24-Purgunnahs for an appointment under that officer and the Collector of the 24-Purgunnahs for the farm of an estate within the jurisdiction of that Collectorate. These petitions he alleges were presented, the one to the Superintendent on the 30th, and the one to the Collector on the 31st of October, the latter date being the very date of the affray which took place at Raikattee and at which affray, it is my firm belief that the prisoner was present. A certificate purporting to be a medical certificate is also filed by the prisoner in the Magistrate's Court in support of his statement that he was in Calcutta on or about the time of the affray. As the defence of the prisoner in the main rests upon *bona fides* of the two petitions, I sent for the originals and the registry book of petitions from the offices of the Superintendent of salt chowkies and the Collector of the 24-Purgunnahs. These have been received and inspected.

The petition to the Superintendent of salt chowkies is on plain paper, its purport is a prayer to be appointed to some office under the control of the Superintendent, this petition may have been presented according to previously received instructions by any party passing himself off as Rajcoomar Roy. It is a matter of surprise that a wealthy zemindar of this district in a bad state of health and going down, as the prisoner avers, to Calcutta to seek medical advice, should almost immediately after his arrival personally petition for a situation under a Superintendent of salt chowkies. It is also very probable that the signature of the Superintendent has been obtained on the face of this petition without his being aware of the purport or date of the petition. The order on the petition is "that at present there is no vacancy and that when a vacancy occurs a proper order will be passed," such a petition might have been smuggled in on any date with other papers for the mere purpose of obtaining the signature of the Superintendent. An inspection of the original registry of the petitions received from the office of the Superintendent materially confirms my suspicions of the "*bona fides*" of that petition.

The petition is registered as No. 4201, the registry book is not a bound book, the numbers in this book run from No. 3516 to No. 5062. The first entry is dated 8th September, 1855.

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From the headings of this registry, I have every reason to believe that, that registry properly refers only to reports and petitions received from or presented by the subordinate officers of the salt Superintendency. The headings are as follows.

| Number. | Date<br>of<br>Receipt. | Date. | Name of<br>the chowkee<br>Amlah | Abstract<br>of<br>Report | Date of<br>order | Abstract<br>of<br>order | Number of<br>Sheets. |
|---------|------------------------|-------|---------------------------------|--------------------------|------------------|-------------------------|----------------------|
|---------|------------------------|-------|---------------------------------|--------------------------|------------------|-------------------------|----------------------|

The prisoner has managed with the connivance of the Amlah of the Salt chowkee department to procure the entry of the petition above alluded to in this registry, the mere name is entered without the residence, there may be other Rajcoomar Roys, it is not uncommon name, and doubtless the Superintendent receives many petitions from parties seeking appointments. The sheet upon which the petition is registered must have been added to the registry book at a subsequent date for the ink in which the entries upon the interpolated sheet are written is much paler than the ink with which the other entries throughout the registry are written, the hand-writing to my eye is also different. It appears to me that the entries in the interpolated sheet have been written with a quill or steel pen and the rest of the entries with a Bengali pen.

With reference to the petition which it is alleged was presented to the Collector of the 24 Pergunnahs by the prisoner on the 31st of October, 1855, I would observe that the signature of Mr. E. T. Trevor, at the foot of the order on the reverse of the petition is a palpable forgery, indeed it is pronounced to be "a decided forgery" by Mr. F. A. Lushington, the present Collector of the 24-Pergunnahs. Again the price of the stamp has not been punched out, which it is the practice of all the Courts to do in every case, except in the case of deeds and documents belonging to parties to a suit. The date in the registry of the Collectorate has been altered from the 30th to the 31st of October. This is palpable to the naked eye. Altogether a more glaring, a more clumsy attempt at forgery I have never seen. The real petition was probably presented by a mooktear under instructions, the date of registry has been altered from the 30th to the 31st of October, the latter being *the date upon which the affray took place*. The conduct of the amlah of the record office of the 24-Pergunnahs Collectorate in this case is under enquiry before the Collector, I would also observe that the stamp paper on which the petition, if written, was purchased in the Burra Bazar, the prisoner, if he was in Calcutta at all, resided for the time he was at Calcutta first at Kalleeaghaut and then at Simla; at both places there are stamp-vendors and both places are at a considerable distance from the Burra Bazar.

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The medical certificate, filed by the prisoner, is signed by Judoonath Doss, native doctor attached to the gun-foundery at Cossipore. This doctor is a third class native doctor on a salary of 15 Rs. per mensem, he admits in his evidence that this certificate was not written by him but by another party at his request, that the prisoner sent a person to ask for a certificate, and that the certificate under remark was given on the 25th of December, 1856, upwards of a year after the affray took place. Judoonath Doss has deposed in this Court that he attended the prisoner professionally from the 2nd of November to the 9th of November, 1855, the witness did not bring his memorandum book of patients with him, his memory therefore is a singularly retentive one, he deposes to the receipt of 10 Rs. for five visits to the prisoner, he states that he is in the habit of giving certificates to parties who ask for them, doubtless receiving a handsome consideration.

Jadub Sircar was the party who called on this doctor, it is curious that the name of Jadub also appears at the foot of the order on the petition alleged to have been presented by the prisoner to the Collector of the 24-Pergunnahs.

The Jury in their verdict express utter disbelief of the truth of the defence set up by the prisoner, but they would acquit him, because the late Deputy Magistrate of this district, Syud Abdool Mujeed, in a preliminary enquiry in this case, stated it to be his opinion that the presence of the prisoner in the affray was a matter of doubt, I would remark that the Deputy Magistrate and the prisoner are inhabitants of the same district and they are both zemindars. The prisoner was treated by the Deputy Magistrate more as a visitor to his Court than as a prisoner, he was permitted to sit down by the side of the Deputy Magistrate, and instead of his defence being recorded, he was called upon for a statement of what he knew respecting the affray. The burkundaz Rubbee Singh, when he gave his evidence before the Deputy Magistrate hesitated at first to depose that he recognized the prisoner in the affray, and I am not surprised at this hesitation, looking at the great consideration with which the prisoner was treated by the Deputy Magistrate.

The prisoner has been sentenced as shewn below.

*Sentence passed by the lower Court.*—To be imprisoned without irons for four years and to pay a fine of one thousand rupees on or before the 22nd June, 1857, or in default of payment to labor until the fine be paid or the term of his sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) The question presented for our consideration by the prisoner who has appealed from the conviction of the Sessions Judge is, whether or no, he was present and took part in an affray attended with great violence, which

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occurred at Raikattee on the 31st October, 1855. The Sessions Judge has relied upon the deposition of four burkundazes and of the police Darogah, who were brought to the spot by the outbreak : and the main ground taken by the prisoner's Counsel is, that other burkundazes who were also present did not see the prisoner, and that those who profess to have seen him, could not have done so, on the spot where they are supposed to have stood.

Upon the whole, we think, the Sessions Judge's conviction must be sustained. We see no ground to reject the positive testimony of the witnesses in question to the identification of the prisoner and to the very strong corroborative testimony of the Darogah. We observe that from the first opening of the enquiry, that is on the 1st November, the presence of prisoner in the affray was recorded upon the identification of the burkundazes. A preliminary objection had been taken before us, that the Magistrate had declined to bring before the Sessions Court *all* the witnesses named by the prisoner. The prisoner, it is said, had named twenty-five witnesses, and as he declined to select a smaller number, the Magistrate had summoned the first twelve. Hence it is argued that the prisoner's means of defence have been unjustly restrained. We observe, however, that the prisoner himself in his defence at the trial, did not say that witnesses whom he wished to summon were not there; rather he said, that the witnesses who were present, would prove his *alibi*. He seems to have said that the Magistrate had committed him for trial, without examining *all* the witnesses named by him in the preliminary enquiry; but certainly, he did not give the Sessions Judge to understand that as the matter came for trial, his defence was hampered. Further, we remark that this objection did not rest upon the plea that any branch of evidence which the prisoner desired to adduce has not been enquired into; we are not told that this point or that point has not been investigated; and while we fully admit it would be the duty of a Sessions Judge to summon witnesses whom a prisoner might show to be important to his defence, we have in the present case a mere general objection asserted, without wrong done.

We affirm the conviction and sentence.

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PRESENT :

A. SCONCE AND J. S. TORRENS, Esqs., *Judges.*

GOVERNMENT AND CHOONOUNG

*versus*

GNAMROO.

Arracan.

1857.

CRIME CHARGED.—Wilful murder of Khechain and Mee Gnyama and wounding Pongdoma and Oungmarhee.

Committing Officer.—Captain G. Faithful, Principal Assistant Commissioner, Akyah.

Tried before Captain G. Verner, Officiating Commissioner of Arracan, on the 26th January, 1857.

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Prisoner

*Remarks by the Officiating Commissioner.*—The particulars of the case are as follows. The prisoner was for going to his brother at Thandeng, but his wife objected, he went a little distance from the house; when she got him to return; on his way back, he passed a house of Khechain's, who had been employed, cutting bamboo with a *daw* to make baskets; Khechain had just left the place and left his *daw* behind him, the prisoner took the *daw*, and Khechain telling him not to take his *daw*, the prisoner attacked him, and with one blow of the *daw*, he cut his arm off, and Khechain from loss of blood died very soon after, the prisoner then went towards home and attacked his wife "Mee-Gnya-Ma" with the *daw*, cut her arm off, and inflicted other wounds, from the effects of which she died, on the 3rd December, in hospital. He then attacked another woman named "Mee Pongdoma," who was carrying off her daughter, "Oungmarhee," a child of five or six years of age, he gave the woman a slashing cut with the *daw*, across her back and another cut on her shoulder, the child lost the first joint of her thumb and of her two first fingers, and had her cheek laid open, the handle of the *daw* breaking enabled the prosecutor to seize the prisoner, and others came to his assistance.

sentenced capitally. Defence was that prisoner was under a spell, but it was no where shewn that prisoner was not sane.

The prisoner pleaded *not guilty*.

From the evidence of the prosecutor,\* who is brother of the

\* Choonoung, prosecutor. prisoner's deceased wife "Mee Gnyama" who was at a distance of about twenty bamboos, it appears the prisoner got as far as a Nullah, from whence he returned at her request, when passing "Khechain's" out-house he took his *daw*, which Khechain asked him to return, he cut at Khechain and cut his arm off, he then went towards home, and cut at his wife, twice, the prosecutor ran forward and struck the prisoner with a stick on the head; he fell, but got up, and seeing "Mee Pongdoma"



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and child, he cut at them with the *daw*, when the handle broke, and ran in and caught the prisoner, his uncle and brother came, and they took him to the police pharce.

In the evidence of the witness named in the margin,\* there

No. 1, Oung Pho.

are two or three discrepancies, which he says is owing to the

long time which has elapsed since he gave his evidence in the Foujdary Court. Before me, the witness said he saw the prisoner cut Khechain, to the Magistrate he said he did not see him wounded, but heard him cry out. Before the Magistrate he said he saw his sister "Mee Gnyama" wounded, he now says he did not see for the trees. Again, in the Foujdary Court he said he did not know whence the prisoner came, or where he got the *daw*, before me he said the prisoner came from the Nullah, and got the *daw* at "Khechain's," all very contradictory, but months having elapsed since his evidence was taken in the Foujdary Court, no doubt, what he actually saw and heard, got mixed up together, and he forgot. He, however, saw the prisoner with the *daw* cutting and wounding, he says, Khechain and "Mee Pongdoma" and daughter, and assisted in taking him prisoner.

The witness named in the margin† mother of the deceased

† No. 2, Mee Khay Maway.

"Mee Gnyama" deposed to having seen the prisoner cut

Khechain with the *daw*, and her daughter Mee Gnyama afterwards. There is also a discrepancy in regard to the *daw* in her evidence in the Foujdary Court, she said she did not know where the prisoner got it, before me she said he got it at Khechain's but the difference matters not much.

The witness named in the margin‡ said that Khechain died

‡ No. 3, Dr. Mountjoy.

from loss of blood from his arm having been cut off, that Mee

Gnyama died in hospital from the effects of the wounds she received. He also deposed to the severe wounds Mee Pongdoma and Mee Oung Marhee received.

By the evidence of the witnesses named in the margin,§ the

§ No. 4, Poukee Keouk,

voluntary mofussil confession of the prisoner is proved.

" 5, Nyadah Revagong,

" 6, Khengtee.

The witnesses named in the margin|| prove the prisoner's foujdary confession.

|| No 7, Nuggah, Vakeel,

" 8, Tsanoo, Do,

" 9, Abdool Hushin, Do.

The lethal weapon "*daw*" was produced in Court and was proved by the prosecutor and the witness named in the margin.¶

¶ Choounong,

No. 1, Oung Pho.

The witnesses named in the margin\* prove that it was the

\* No. 10, Mapoungdoma,

" 11. Meeoung Marhee.

prisoner that wounded them, the latter a child, said it was

him, that cut the ends of her fingers off, and wounded her in the face.

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On the prisoner being called upon for his defence, his mofussil confession was read over to him, which he acknowledged to having made of his own free-will, and without any improper influence or threats having been used. He also acknowledged to his Foujdary confession, as having also been made of his own free-will. He says he thought he was bewitched, and did not know what would happen to him, he wanted to go to another village, his wife and others forbid him, he then, in anger, took the *dao*, now in Court, and with it wounded the different persons.

From the evidence of the witnesses and the confessions of the prisoner "Gnamroo," I consider the crime of which he stands charged clearly established, and I therefore consider it my duty to recommend that he be sentenced to death.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Seonce and J. S. Torrens.) The prisoner appears to have perpetrated the murders of which he has been convicted before the Commissioner, when doing what is termed running a "*muck*." The violence of the attack, on the two persons who fell victims, sufficiently indicates the intention to deprive them of life; his confession before the Magistrate as well as the evidence brought against him is full. In his defence, before the Commissioner, he urges that he was under a spell, to escape from which he had formed the intention of departing to another part of the country, and having been prevented from this by the deceased parties, he had recourse to his attack upon them. Whatever influences he was under, it is clear, from his own statements, that he was capable of judging of his acts, and his sanity is no where questioned. We agree in the conviction of the Commissioner, and sentence the prisoner capitally, as recommended.

## PRESENT :

H. T. RAIKES, Esq. *Judge*, AND  
C. B. TREVOR AND D. I. MONEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT

*versus*

Mymensingh.

SHEIKH NOZUMOODDEE.

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ZUMOODDEE.

Prisoner con-  
victed by a  
majority of the  
Court : wilful  
perjury being  
proved, in pri-  
soner falsely  
deposing on  
oath in regard  
to his name,  
parentage and  
residence, and  
such false de-  
position on  
oath being ma-  
terial to the  
issue of the  
case, as it  
affected CRE-  
DIBILITY of a  
witness.

**CRIME CHARGED.**—Perjury, in having on the 27th February, 1857, deposed under a solemn declaration taken instead of an oath before the Law Officer of this district that his name was Khoda Newaz, son of Alec Mahomed, inhabitant of Kally Khar Kandee, such statement being false and intentionally and deliberately made on a point material to the issue of the case.

**CRIME ESTABLISHED.**—Perjury.

**Committing Officer.**—Moulvee Abdool Kurreem, Law Officer of Mymensingh.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 3rd June, 1857.

**Remarks by the Sessions Judge.**—The prisoner was a para-mour of Musst. Romance, prisoner No. 5, (acquitted) and in a complaint brought by the latter in the Foujdary Court, the prisoner, it would appear, gave evidence before the Law Officer in which he concealed his real name and parentage. He personated himself to be one Khoda Newaz, son of Alec Mahomed, resident of Kally Khar Kandee, which being detected, he was committed to stand his trial in this Court on a charge of perjury. The prisoner denied the charge throughout. He states that he did not give evidence in the case and that the charge has been got up against him from malicious motives.

Of the fact of the prisoner having personated another man, and given evidence on oath under a fictitious name, there is not a doubt. The fraud was immediately detected by witness No. 2, who together with No. 3, have deposed before me that no person by the name of Khoda Newaz appeared to give evidence, and that no one of that name gave evidence in the case, but that the prisoner falsely did so, under that name: and it appears from the evidence of witness No. 7, that he was prevailed upon by the prisoner to give evidence under the fictitious name of Khoda Newaz; but owing to his refusal, the prisoner himself personated him, and gave evidence in the case. The prisoner denies that he gave evidence in the case, but of this he has adduced no proof, and the real Khoda Newaz, witness No. 5, states before me, that he neither appeared or gave evidence. Further, witness No. 11, who wrote out the prisoner's deposition, stated

before the Law Officer that he resembled the man who then gave evidence by the name of Khoda Newaz.

On these grounds, I convict the prisoner of perjury, in concurrence with the verdict of the assessors who aided me on the trial, and sentence him to (3) three years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. H. T. Raikes, C. B. Trevor and D. I. Money.)

*Mr. C. B. Trevor.*—The prisoner appealing, viz. Sheikh Nozumooddee, was charged with having on the 27th February, 1857, deposed under a solemn declaration taken instead of an oath before the Law Officer of Zillah Mymensingh that his name was Khoda Newaz, son of Alee Mahomed, inhabitant of Kally Khar Kandee, such statement being false, and intentionally and deliberately made on a point material to the issue of the case.

The Judge, in his Remarks on the case, writes as follows: "Of the fact of the prisoner having personated another man and given evidence on oath under a fictitious name there is not a doubt. The fraud was immediately detected by witness No. 2, who, together with No. 3, have deposed before me that no person by the name of 'Khoda Newaz' appeared to give evidence, and that no one of that name gave evidence in the case, but that the prisoner falsely did so under that name, and it appears from the evidence of witness No. 7, that he was prevailed upon by the prisoner to give evidence under the fictitious name of Khoda Newaz but owing to his eventual refusal, the prisoner himself personated him and gave evidence in the case. The prisoner denies that he gave evidence in the case, but of this he has adduced no proof; and the real Khoda Newaz, witness No. 5, states before me that he neither appeared nor gave evidence. Further, witness No. 11, who wrote out the prisoner's deposition, before the Law Officer, stated that he resembled the man who then gave evidence by the name of Khoda Newaz."

"On these grounds I convict the prisoner of perjury, in concurrence with the verdict of the assessors who aided me on the trial, and sentence him to three years' imprisonment with labor and irons."

The questions now before us are, whether the facts found by the Judge are borne out by the evidence on the record or not, and if they be, whether they are sufficient to sustain the charge of perjury or not.

It appears to me, that in the present case, it is unnecessary to determine the first point: for, granting that all the facts found by the Judge are borne out by the evidence, they are insufficient to sustain the crime of perjury of which the prisoner has been found guilty.

The Judge on the evidence has, in reality, found the prisoner guilty of false personation, and of that only; he has said no-

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thing regarding the materiality of that false personation to the point at issue in the case in which the false evidence was given, and in order to establish the legal crime of perjury, the matter, regarding which the false evidence is given, must be found to be material to the point then in issue before the Court ; it is not impossible that on the record there might be evidence sufficient to show its materiality, but as an appellate Court we have simply to determine whether the Judge's finding as to *facts* and *law* will stand ; if the facts found by him are trustworthy and sufficient to sustain the crime of which the prisoner stands charged, well and good ; if, however, the facts found, though trustworthy, do not suffice to sustain the crime of which the prisoner has been convicted, or to allow of any legal inference being drawn by the Court in order to satisfy the legal requirements of the crime of which the party has been convicted, the prisoner must be released ; it is not competent for an Appellate Court itself to find new facts or to draw legal inferences from facts not found by the lower Court, even though evidence sufficient to establish more facts may be upon the record.

Under this view of the present case, as it seems to me that the legal crime of perjury has not been made out against the prisoner by the Sessions Judge, I would direct his immediate release.

*Mr. D. I. Money.*—The prisoner is charged with perjury, in having on the 27th February, 1857, deposed under a solemn declaration taken instead of an oath before the Law Officer of this district, that his name was Khoda Newaz, son of Alee Mahomed, inhabitant of Kally Khar Kandee ; such statement being false, and intentionally and deliberately made on a point material to the issue of the case.

The Sessions Judge *finds* the prisoner *guilty of this charge of perjury* on full legal proof.

I entirely concur with the Sessions Judge in this finding. It is deliberate and wilful perjury ; it is not merely false personation by the prisoner, which is an offence *sui generis*, apart from the perjury, and of which he might have been guilty without any declaration on oath, but it is the false statement intentionally made on oath that his name was Khoda Newaz, and the representing himself falsely to be that individual that was material to the issue of the case.

Mussamut Romanee, the prisoner's concubine, was the prosecutrix in a criminal case, and the prisoner was one of her witnesses. The prisoner concealed his real name, and declared himself to be Khoda Newaz, because he knew that giving evidence in his own name would, as he was known to be the prisoner's paramour, disentitle that evidence to the credit, which evidence in another name might, regarded as disinterested testimony, obtain. In order therefore to induce the Court to give readier credit to the

substantial part of his evidence, he not only personated another individual, but swore falsely under the false personation, and the point on which the perjury was committed, was material, with reference to the credibility of the evidence, to the issue of the case.

The Court was guided by this principle in the cases recorded in the Nizamut Adawlut Reports of Government *versus* Sumbhoo, page 259, Vol. IV; of Government *versus* Bukhory, pages 260-61, Vol. IV; and of Government *versus* Sheboo Doss Byragee, pages 144-45, Vol. V.

Russell on Crimes and Misdemeanours, Vol. II. book 5, page 600, distinctly lays down this principle, where he states, that "the oath must be material to the question depending; for if it be wholly foreign from the purpose, or altogether immaterial, and neither in any way pertinent to the matter in question, nor tending to aggravate or extenuate damages, *not likely to induce the jury to give the readier credit to the substantial part of the evidence*, it cannot amount to perjury."

"And it is spoken of as a reasonable opinion, that a witness may be guilty of perjury in respect of a false oath *concerning a mere circumstance*, if such oath *have a plain tendency to corroborate the more material part of the evidence*."

The Sessions Judge finds the prisoner guilty of the perjury with which he is charged, and the *materiality* is apparent on the record. It might perhaps have been more regular, if the Sessions Judge had explained, when stating the case, wherein the *materiality* consisted, but I do not see, how the fact, if apparent on the record, can in the slightest degree be altered or affected by such omission. It remains perjury to all intent and purposes. If, looking to the record, we believe the perjury to have been committed on a point material to the issue of the case, we are, I conceive, as an Appellate Court, bound to uphold the Judge's finding.

Otherwise, on technical grounds, we should allow the omission of the Sessions Judge to be the prisoner's exculpation, although he finds him guilty of the perjury, and we coincide in the verdict.

There is, I observe, in the Nizamut Adawlut Reports for the month of September, 1856, a case somewhat similar to this, that of Government *versus* Biru Sirdar, page 712, tried by Messrs. Raikes, Torrens and Trevor, and in which Mr. Torrens, takes the same view as myself. I concur in the following remarks which he has made. "Whether the falsehood consisted in his simply giving a feigned name, or in other and further mis-statements, or not, so long as the false representation of the name was at all material in the matter under trial, and was wilful and designed, it constitutes perjury in the plain meaning of the term." That the Sessions Judge has not entered into a detail of the grounds

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in which this false statement was material to the case, does not, as the charge was laid, vitiate the sentence.

I see no grounds whatever for interfering with the sentence passed by the Sessions Judge, and would therefore reject the appeal.

*Mr. H. T. Raihes.*—The Sessions Judge has convicted the prisoner of perjury on the charge brought against him. That charge not only assumes the falsehood of the statement made by the prisoner regarding his own identity, but also avers that such statement was wilfully and deliberately made on a point material to the issue of the case.

The detail of the trial given by the Sessions Judge is, that the prisoner, being the paramour of Rómanee who had lodged a complaint in the Foujdary Court “gave evidence before the Law officer in which he concealed his real name and parentage.” He personated himself to be one Khoda Newaz, son of Aleo Mahomed, resident of Kally Khar Kundee, which, being detected, he was committed to stand his trial in this Court on a charge of perjury.”

The Judge then observes “of the fact of the prisoner having personated another man and *given evidence on oath* under a fictitious name, there is no doubt.” He then proceeds to state how in his opinion the evidence proves the above fact, and concludes with recording that “on these grounds I convict the prisoner of perjury.”

Doubtless the Judge has summed up his case in a confused and slovenly manner, but still taking the charge as it stands, the proof on the record, and the finding of the Judge altogether, it is fairly presumable he meant that the perjury consisted in the prisoner having *falsely deposed on oath* to bearing a name which did not belong to him, to a false parentage, and to a false place of residence; that moreover by these false representations he personated the real witness in a case under trial.

Now, if the materiality of this false statement in that case is obvious and self-apparent as arising inferentially from the nature of the falsehood itself, without requiring other and further evidence to prove the averment (of materiality) as contained in the charge, I see no reason why the Appellate Court should not then make use of it's existence on the record to uphold the conviction, although the Sessions Judge has, ignorantly, or negligently omitted to support his judgment by it.

By so doing, I do not see how the prisoner's defence is, in any degree, prejudiced, as supposing him to know that the evidence produced at the trial has brought against him certain criminating facts, which facts of themselves justify certain legitimate pre-suppositions, the prisoner cannot complain, if in the absence of his ability to disprove those facts, the inferences are used against him. I will take the case of a thief taken, and with the stolen

property near the spot where, and immediately after, the theft has been committed. He is charged with the theft, and the evidence goes to show only the possession. Under the above circumstances, which the officer trying the case adverts to, but, without stating that they are legally sufficient to prove the actual theft of the property, convicts him of the full offence charged, would any Appellate Court hold itself bound to interfere with the conviction, on the ground that the legal inference which would justify such conviction had not been remarked upon?

So in this case, if the materiality can be absolutely presumed from trustworthy facts found proved by the Court below, I think the Appellate Court may safely uphold the conviction.

I agree with Mr. Money, that the finding of the Sessions Judge is something more than "false personation." The evidence on the record fully shows that the prisoner supported his false personation of another person by a *false oath*. The Judge says, there is no doubt that the prisoner personated another man, and gave *evidence on oath* under a fictitious name. Obviously the Judge meant to base the conviction on this *false oath*, not on the false personation only. The question is, does it sufficiently appear from the nature of the falsehood, that it was material to the matter then before the Court.

Here I do not agree with Mr. Money, that the materiality consists in the particular motives assigned by him to the prisoner for concealing his name. I do not find these same motives ascribed to him elsewhere, nor am I satisfied that the prisoner felt his own evidence would be disbelieved in consequence of his connection with Romanee, and that for this reason he appeared in the name of another. No such inference appears to me to arise conclusively from any facts on the record. Nor do I see the necessity of looking for particular reasons dependent solely upon what might have actuated the prisoner in this particular case, when the materiality of the falsehood charged, is clearly deducible in this, as well as in all similar cases from its obvious tendency to mislead and deceive the Court on a point which must affect materially the credibility of any evidence so tendered before it. I allude to the Courts being misled in all such cases as to the identity of the witness who is supposed to be giving evidence before it, and the discrediting effect this would have, on such evidence, if the imposition was known to the Court.

There can be no doubt that the object of the person who substitutes his own evidence for that of another, (whether such evidence be in itself true or false,) is to palm it off upon the Court as that of the genuine witness, and it can only be in the belief that the genuine witness is before it, that the Court would either receive or attach credit to such spurious evidence.

If then other false oaths emitted in the hope of gaining

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1857. readier credence with the Court be, on *that ground* held to be *material*, and to render the deponent liable to the penalties of legal perjury, it necessarily follows in my opinion that false oaths regarding the deponent's own identity, resorted to also for the purpose of gaining credit for his subsequent statements, must be held to be equally material.

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The evidence then in this case being sufficient to prove, as found by the Judge below, that the prisoner concealed his own name, and made oath instead to the name, parentage, and residence of another, the Court upon this fact alone should infer first that it was wilful and deliberate, because the prisoner was speaking to a fact with reference to which he cannot be presumed liable to mistake, and second that it was *material* because he thereby hoped to add to the *credibility* of his further statement, the *credibility* of a witness being a matter always in issue in every case.

Thus it appears to me this conviction may be upheld on the facts found by the Judge, since those facts fully support such legal presumptions as prove the prisoner's guilt.

I concur with Mr. Money, in rejecting the appeal.

#### PRESENT:

A. SCONCE AND J. S. TORRENS, Esqs., *Judges*.

#### GOVERNMENT

*versus*

Mymensingh.

SHEIKH OLEE MAHOMED.

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OLEE MA-  
HOMED.

**CRIME CHARGED.**—Perjury, in having on the 22nd September, 1855, deposed under solemn declaration taken instead of an oath before Baboo Joychundur Goocho, Deputy Magistrate of Mymensingh, that he was not related to the prosecutor Kootuboolah, such statement being false and having been intentionally and deliberately made on a point material to the issue of the case.

Prisoner acquitted; relationship not being proved, and the charge not asserting the relationship.

**CRIME ESTABLISHED.**—Perjury.

Committing Officer.—Moulvee Abdool Kurreem, Law Officer of Mymensingh.

Tried before Mr. W. T. Trotter, Sessions Judge of Mymensingh, on the 11th July, 1857.

*Remarks by the Sessions Judge.*—In a case before Baboo Joychundur Goocho, a Deputy Magistrate formerly attached to this district, the prisoner deposed on oath that he bore no relationship to Kootuboolah, the prosecutor in that case. On subsequent enquiry it having been proved that the prisoner was his

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uncle, he was put on his defence when he admitted before the Law Officer that he denied the relationship before the Deputy Magistrate through fear, and he was accordingly committed to this Court on a charge of perjury. In this Court he pleads that the question was not put to him, but as he himself admitted before the Law Officer that the question was put to him by the Deputy Magistrate and through fear he committed the perjury and the mohurrir who took down his depositions having deposed that his answer was recorded just as he stated it, I can place no faith on his assertions. The prisoner moreover, does not deny the relationship in this, and the witnesses examined on the trial have deposed to his being Kootuboollah's uncle. On these grounds I convict the prisoner of perjury, in concurrence with the verdict of the assessors, and sentence him to (3) three years' imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) The perjury charged against prisoner is founded on a deposition given by him as a witness in a case of assault preferred by Kootuboollah. At the close of his deposition, he was asked how far his house was from prosecutor's house, when the following answer was recorded: he said he lived two houses off; that Assanoollah up to that time could not go about, and that he had no connexion (*ilaka sumpurko*) with prosecutor.

This answer is taken to be perjury, and the Sessions Judge, holding it to be proved that prisoner is an uncle of Kootuboollah, convicts him of the crime.

But what the Judge says is proved, is *not* proved. It is not proved that prisoner is uncle of Kootuboollah. One witness says that Kootuboollah is the son of prisoner's *Chuchera bhace*; a second says, in language, which we will not translate, that prisoner and Kootuboollah are *pitar chuchato jetato bhrata*; and a third uses a similar language. We have no specific details of the relationship of the parties; and at any rate, it is very plain that the Judge, with all the opportunities of a formal trial before him, has failed to determine the relationship which the prisoner is supposed to have denied. Further, the Judge says that the prisoner did not deny the relationship in his Court: but the Judge seems to have overlooked the tenor of the prisoner's answer, who admitted that Kootuboollah was his nephew only in the familiarity of fellow-villagers. Under such circumstances we do not find the crime of wilful perjury to be established. Not only is the relationship, relied upon, not proved, but the charge itself, without asserting the fact which the prisoner is supposed to have denied, leaves it to be inferred that a relationship existed. Obviously it would be more just, in all such cases, to set forth in the indictment the fact, of which the denial is stated to have been made, and

1857.      not to embrace in general language any remote degree of cousin-  
hood which may happen to be traceable. We acquit the pri-  
soner.

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PRESENT:

A. SCONCE AND J. S. TORRENS, Esqs., *Judges*.

GOVERNMENT AND SURROOPCHUNDER  
CHATTERJEE

*versus*

East-Burd-      LALLCHAND BAGDEE (No. 1,) CALEECHURUN DOME  
wan.      CHOWKEEDAR (No. 2,) AND KHETOO BAGDEE  
CHOWKEEDAR (No. 3.)

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others.

CRIME CHARGED.—1st count, wilful murder of Nokoor-  
chunder Chuckerbutty; 2nd count, plundering of property  
valued at Co.'s Rs. 34-10, from the house of the deceased; 3rd  
count, No. 3, knowingly keeping possession of a portion of the  
above plundered property; 4th count, Nos. 2 and 3, committing  
the above crime whilst holding the posts of police chowkeedars.

Committing Officer.—Moulvee Abdool Luteef, Deputy Magis-  
trate exercising the full powers of a Magistrate at Jahanabad.

Three pri-  
soners con-  
victed of wil-  
ful murder as  
principals, on  
their own con-  
fessions, and  
sentenced to  
death. One  
prisoner con-  
victed as an  
accessary and  
sentenced to  
transportation  
for life.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of  
East-Burdwan, on the 16th September, 1857.

*Remarks by the Officiating Sessions Judge.*—All three pri-  
soners plead "*not guilty*." It appears from the evidence of the  
prosecutor, Surroopchunder Chatterjee, that information reached  
him at the village of Belloot at about 7½ A. M. of the morning  
of the 25th Joisto, (6th June,) to the effect that his uncle,  
Nocoorchunder Chatterjee, had been murdered on the previous  
night in his house at Mohunpore, and that his body had been  
thrown into the river Damoodah. Upon receiving this inform-  
ation prosecutor lost no time in proceeding to Mohunpore, which  
is two *coss* distant from Belloot, and on reaching his uncle's  
house at about 9 A. M. he found the southern door lying open,  
and some of the bedding spread in the verandah. The house  
had apparently been plundered, as a box was lying broken open,  
and many articles were missing. He was then told by the wit-  
nesses Nos. 10 and 18, that on the previous night about  
12 o'clock they had seen three men going in the direction of the  
river, and that two of the three had loads on their heads, and that,  
on asking where they were going, one of the three, whom by his  
voice they recognised as being the prisoner No. 2, had replied  
"*choop sallah, teera Bap*." "Be quiet, it is your father," and they  
suspected therefore that the above three persons had murdered

the prosecutor's uncle, and had thrown his body into the river. Prosecutor also suspected that the prisoner No. 1, had taken a part in the murder, that person having, at the instigation of the deceased, been dismissed from the employ of one Heeraloll Chuckerbutty, and having, moreover, together with another master, Nuffer Chatterjee, by whom he was employed subsequent to his dismissal from Heeraloll's service, been fined Rs. 5 by the talookdar of the village for stealing a goat, notice of the theft having been in like manner supplied by the deceased. The prosecutor stated his suspicions to the Darogah, who arrived on the spot on the night of the same day (25th Joist.) Previously to the arrival of the Darogah, the body of a man from which the legs arms and head had been severed, had been found in the bed of the river at a place distant about quarter of a *cos* from the deceased's house, and the prosecutor recognised the body as being that of his uncle, owing to its having a hump on the back. Prisoner No. 1, on being arrested two days afterwards (27th Joist,) confessed that the murder had been committed by himself, and the prisoners Nos. 2 and 3; and prisoner No. 2, who was arrested the same day, confessed to the same effect; as did also the prisoner No. 3, when arrested on the following day (28th Joisto,) though each of them denied that he was *himself* the *actual* perpetrator of the murder. The head and right arm of a human body were subsequently found by the police in the bed of the river at a place distant about one *russee* or forty yards from where the trunk had been discovered, and the prosecutor recognised the head as being that of his deceased uncle. He also recognised, as having belonged to his late uncle, two articles of clothing, which were found on searching the house of prisoner No. 3, in whose house also was found a sword, supposed to be the weapon with which the limbs and head were severed from the body, and on whose person a cloth with a spot of blood on it was also found. The reason why the deceased caused the dismissal of prisoner No. 1, from the service of Heeraloll Chatterjee was, because the prisoner had an intrigue with that person's mother, the deceased being a relation of Heeraloll's, and having also had an illicit intercourse with the above female.

The evidence of the witnesses Nos. 10 and 18\* shews that

\* Wt. No. 10, Goburdhun Chuckerbutty, they saw three persons,  
 „ „ 18, Lukheerain Chatterjee. two of whom had loads  
 on their heads, proceeding towards the river on the night of the murder, which was a moonlight night, and that on calling out to ask who they were, one of the three persons replied, and from his voice they recognised that person as being the prisoner No. 2. They related

† Witness No. 19, Bonmalee Chatterjee. the circumstance to witness No. 19† im-

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mediately on their getting back to the village, and in the morning communicated it to the prosecutor on his arrival there. There are some slight discrepancies in the evidence of these three witnesses as to the words which were uttered by the prisoner No. 2, when responding to the challenge of witnesses Nos. 10 and 18, and with reference to the conversation which took place between themselves in the village near No. 19's house, but the discrepancies are immaterial, and I believe the evidence to be substantially true.

The finding and recognition of the body and head of the\*

\* Witness No. 4, Notobur Sircar,

" " 5, Cazeer Abdool Ruhman, "

" " 10, Goburdhun Chatterjee.

† Witness No. 8, Baboo Omachurn Sett,  
Sub-Assistant Surgeon.

deceased has been duly proved and the result of the examination made by the medical officer† shows that the body was that of a man of about forty years of

age, and that there was a distortion of the spine such as would exist in hunch-backed persons, and that the head had been severed from the trunk by mutilation with some sharp-cutting instrument such as a sword. The medical officer has stated it as his opinion that mutilation was effected previous to death, but as the body was not quite fresh when examined by him, it is not impossible that he may have been mistaken on this point.

The confessions made by the several prisoners before the

‡ Wit. No. 4, Notobur Sircar,

" " 5, Cazeer Abdool Ruhman,

" " 9, Zahcer Mollah,

" " 10, Goburdhun Chatterjee.

§ Wit. No. 12, Bissumbhur Sircar,

" " 13, Moheshchunder Koberaj,

" " 14, Ramcomul Bose.

police Darogah‡ and the Deputy Magistrate§ of Jehanabad have been only proved, those of the prisoner No. 1 are, to the effect that, at the instigation of his employer, Nuf-

fer Chuckerbutty, who was at enmity with the deceased, he engaged the other two prisoners to commit the murder. Nuffer Chuckerbutty having held out to him the prospect of obtaining about 200 Rs. which he said deceased has amassed preparatory to making a pilgrimage, and having further promised him a reward from himself. Prisoner No. 1, further states that the other two prisoners were the actual perpetrators of the murder which they effected by strangling the deceased, while he was sleeping in the verandah of his house, and that he looked on while the deed was being done. That they all three, after clearing the house of its contents, proceeded with the latter and the dead body to the river where they cut off the head and limbs and threw them and the trunk into the water.

The confessions of the prisoner No. 2, are to the same effect as those of prisoner No. 1, except that he says that prisoners

Nos. 1 and 3 were the actual perpetrators of the murder, and that it was prisoner No. 3 who strangled the deceased, while No. 1 held him by the feet.

The confessions of prisoner No. 3, are to the effect that he was induced by the prisoner No. 1, to join in what he understood was only to be a robbery and which was to be effected in the following manner. The prisoner No. 1 told him that he had an intimacy with a female in his village who had 200 Rs. worth of jewels, and that he and prisoner No. 2, would on some pretence bring her down to the river bank on such night as might be arranged upon, and that he, prisoner No. 3, was to be lying in wait there, and on their reaching the spot he was to cough, when they would run off, and he would be able to rob the woman of her jewels. He then states the manner in which the murder took place, viz. that prisoner No. 2, strangled the deceased while he (prisoner No. 3,) held him down by the legs. This account corresponds with the description given of it by the prisoner No. 1.

Nuffer Chuckerbutty, who was named by prisoner No. 1, as the instigator of the deed has been released by the Deputy Magistrate, having established an *alibi* to that officer's satisfaction, and there being nothing beyond the statement of prisoner No. 1, to implicate him in the murder.

Before this Court the prisoner No. 1, denies having confessed before the police and the Deputy Magistrate and says that he was beaten by the Darogah. Prisoner No. 2, also denies having confessed and says he was ill-treated by the police, who wrote down whatever they thought proper, and he further urges that it is impossible that witness No. 18, with whom he had a very slight acquaintance, could have recognised him by his voice on the night of the murder. He says that he has evidence to prove that he was in his own village, Jufferabad, which is three-fourth of a *cos*s from Mohunpore, on the night of the occurrence, but that the Deputy Magistrate refused to summon his witnesses. I find, however, that he stated before the Deputy Magistrate that he had no witnesses for his defence. Prisoner No. 3 also denies his confessions, and says he was beaten and otherwise ill-treated by the Darogah. He declines having the five witnesses, whom he had cited for his defence, examined, these witnesses, when examined before the Deputy Magistrate, were unable to depose to any thing in the prisoner's favor.

The *futwa* of the Law Officer convicts all the prisoners on violent presumption as accomplices in the wilful murder of Nocoor Chuckerbutty, and declares them to be severally liable to punishment by *seasut*.

In this finding I concur. The murder occurred on the night of the 5th June, and the reports of the village authorities, and of the pharee burkundaz regarding it reached the thaunnah,

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which is five *coss* distant, at 3 P. M. on the 6th, and in those reports mention is made of the trunk of deceased having been found in the river. The Darogah reached the spot at 10½ P. M. on the 6th June, and took the depositions of the prosecutor and of the witnesses Nos. 10 and 18, on the following morning (7th June,) and the depositions were at once forwarded to the Deputy Magistrate whom they reached on the 8th idem. The prisoners were not arrested until the 8th and 9th June, that is to say not until after the depositions of the prosecutor and the above witnesses had been duly taken and forwarded to the Deputy Magistrate, and the proceedings of the police appear throughout to have been conducted in a regular manner, and not to be open to any suspicion. All the prisoners have, by their own admissions before the police and the Deputy Magistrate, incurred the penalty of death, and I am unable to find any extenuating circumstances in favor of any of them. I think, however, that the ends of justice will be satisfied by sentencing one of the number to capital punishment, and the other two to transportation for life. The confessions of prisoners Nos. 1 and 3, would point out the prisoner No. 2, as having been the person who actually strangled the deceased, whilst the prisoner No. 3 held him down by the feet; whereas prisoner No. 2's confessions would shew prisoner No. 3 to have strangled deceased, while prisoner No. 1 held him down. There is no legal proof to shew which version of the occurrence is the correct one, considering the prisoner No. 1, Lallechand Bagdee, as the most guilty of the three, he having instigated and planned the murder, I recommend that he be sentenced capitally, and that the prisoners, Calce Churun Dome chowkeedar and Khetoo Bagdee chowkeedar, be sentenced to imprisonment for life in transportation beyond sea.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sounce and J. S. Torrens.) These three prisoners are indicted for the wilful murder of Nocoorchunder Chuckerbutty, which occurred on the night of the 5th June last.

The prisoner, Lallechand Bagdee towards whom the prosecutor's suspicion turned, was arrested on the 8th June; and on this day, before the Darogah, as on the following day before the Deputy Magistrate, Moulvee Abdool Lateef, he freely admitted the part he took in this murder. Lallechand, on both occasions, admitted that he applied to the two other prisoners to assist him in murdering Nocoorchunder; that he accompanied them for that purpose to the deceased's house; that he stood near when Kenoo *alias* Calcechurun seized the head and Khetoo the lower part of the body of Nocoorchunder, and strangled him; that he carried the deceased's property, which they plundered, the two others bearing the dead body, towards the river; that Khetoo severed the head and limbs from the trunk and he (Lallechand) cast the detached members into deep water.

The prisoner Caleechurun *alias* Kenoo was also arrested on the 8th June, having been recognized as one of three men, who were met by the witness Goburdhun Chatterjee on the night of the murder under suspicious circumstances. Immediately after his arrest Kenoo made a confession to the Darogah ; and on the 9th June, before the Deputy Magistrate, he repeated the same details. This prisoner admitted that he had been asked by the two others to join them in murdering Nocoorchunder, and that he went with them for that purpose. He said he stood by, while the two others killed him, and that he carried the dead body to the Damoder river, where Khetoo severed the limbs from the trunk, and Lallchand threw the severed parts into the river.

The third prisoner Khetoo was arrested on the 9th June, after being denounced by his accomplices. His confessions to the Darogah and Deputy Magistrate were recorded severally on the 9th and 10th June, and to some extent, (which circumstance is not noticed by the Sessions Judge,) varied from each other. This prisoner did not allow in either statement, that he accompanied the others for the purpose of murdering Nocoorchunder. He says that Lallchand had engaged him to rob a woman of her ornaments, whom he (Lallchand) would inveigle within his reach : and before the Darogah he said that having got to the verandah of a house where a man was sleeping, on his challenging them, Kenoo seized his head, he (Khetoo) his legs, and that as they held him, he died. Further he said that on proceeding to the river, he, for part of the way carried the plundered property, and, for part the dead body, that Lallchand cut off the deceased's head and he (Khetoo) his hands and legs ; and that on asking Lallchand, " what about the woman he had spoken of," he answered it was for *this* he had brought him. Before the Deputy Magistrate, however, Khetoo did not admit that he took any part in the murder, or that he saw the murder committed. He said he stood at the door, 25 *haths* off, that on the others calling him, he went in ; that they put out a dead body, and that on his asking, " What's this you've done ?" they said, " Whatever we have done, let us take away the body." He further said, that Lallchand subsequently severed the head, he the arms, and Kenoo the legs from the trunk.

Before the Sessions Judge, the two first prisoners adduced no witnesses ; and the third declined to examine those whom he adduced. All in defence denied their confessions, and said that the Darogah had beaten them. We see no indication of any ill-treatment on the part of the police ; and all expressly declared, on delivering their confessions to the Deputy Magistrate, that the Darogah had employed no compulsion or force towards them. Upon their deliberate confessions, we must convict the prisoners Lallchand Bagdee and Kaleechurun Dome *alias*

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Kenoo of the wilful murder of Nocoorchunder Chatterjeea; but however probable it may be that the third prisoner, Khetoo, took an active part in the murder, confining ourselves to the tenor of the confession delivered by him before the Deputy Magistrate, we convict him as an accessory in the commission of the same crime.

This murder is most deliberate and foul. With the two prisoners Lallehand and Kenoo, the principal motive appears to have been gain: they hoped to get money in the house of the deceased which, they say, they failed to find; and possibly all of them were engaged by other promises or considerations, the nature of which the record does not disclose. Besides, Lallehand speaks to a grudge he owed the deceased, who, he supposed, caused him to lose his employment as a ploughman. But under any circumstances, the offence of which the two prisoners are convicted is of the most aggravated character, and we therefore sentence Lallehand Bagdee and Kaleechurun to suffer death.

The third prisoner Khetoo we sentence to imprisonment in transportation beyond sea, for life.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND NUBOKISSORE SIRCAR

Rungpore.

*versus*

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Case of  
KADIR MAHOMED  
and another.

KADIR MAHOMED (No. 16.) AND NAZIR MAHOMED  
(No. 17.)

CRIME CHARGED.—1st count, dacoity attended with wounding in the house of Nubokissore Sircar, the prosecutor; 2nd count, receiving and having in possession property obtained by the said dacoity, knowing it to have been so obtained.

CRIME ESTABLISHED.—Receiving and having in possession property obtained by dacoity attended with wounding knowing it to have been so obtained.

Committing Officer.—Mr. J. Longmore, Officiating Magistrate of Rungpore.

Tried before Mr. F. A. Glover, Officiating Sessions Judge of Rungpore, on the 29th May, 1857.

Remarks by the Officiating Sessions Judge.—On the night of the 26th of December last, a dacoity was committed in the house of the prosecutor who lives in the village of Goonagatch Ramdoss, and property to the value of Co.'s Rs. 373-8, carried off. The robbers tied the prosecutor by the hand to the ridge pole of

Prisoners released; the proceedings as to the finding and identity of the property being very unsatisfactory.  
Remarks on Circular Order 30th June, 1857, No. 16 and 12th Dec. 1809, No. 58.

his house, and one of them struck him with a knife on the forehead inflicting, however, but a slight wound. None of the dacoits were recognised at the time of the robbery, nor did suspicion attach to any one, till some days after the occurrence, when two men (released by the Magistrate) were taken up as being concerned in it. On the 24th January following the dacoity, a burglary was effected in the house of one Amanoolah, a resident of the same village, and the prisoners Kadir and Nazir were suspected of having had a hand in it. Their house (the prisoners are own brothers and live together) was searched without effect, and the Darogah was apparently on the point of giving up the investigation when he received intelligence, that the prisoner Nazir (No. 17,) had been seen on the evening of the day on which the search was made, to throw two boxes into a cane jungle, near the banks of the river and decamp. Search was immediately made and the two boxes found. In one was a quantity of silver ornaments, in the other, deeds and other papers belonging to the prisoners. Kadir (prisoner No. 16,) was present with the Darogah at the search, but ran away directly the boxes was opened. The ornaments found in the box were sworn to by the prosecutor as being part of the property plundered from him.

The prisoners were not arrested till some time afterwards, when the Darogah having heard that they were lying concealed in the house of their brother-in-law Nashern Sirdar, sent his jemadar and a burkundaz to capture them, this they succeeded in doing at a place near the Teesta river whither the prisoners were apparently going for the purpose of escaping to the other side. On being arrested they denied all knowledge of the dacoity, and said that the property found was their own. The recovered property was compared with the list of that said to have been stolen, and, except in a few unimportant points, agreed with it.

Witnesses Nos. 1, 2, 3 and 4,\* depose to the arrest of the two prisoners, Kadir and Nazir, on the bank of the river Teesta.

\* Wit. No. 1, Nazir,  
 " " 2, Juhoor,  
 " " 3, Babool,  
 " " 4, Beerum Singh, bur-  
 kundaz.

The two former witnesses do not give their evidence in a satisfactory manner, it does not appear that they actually saw the prisoners in custody. Witnesses Nos. 4 and 5, are the jemadar and the burkundaz of the thannah who made the arrest, they depose to having been sent to the thannah, after an unsuccessful result, they met the prisoners with Nashern on the road going towards the ghat on the river and immediately arrested them.

Witnesses Nos. 5 and 6,† depose to having heard a noise on the night of the dacoity; to going to prosecutor's house in con-

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 " " 8, Dost Mahomed, wounded and heard from him  
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 Case of all his property. Witness No. 7, deposed to the occurrence of  
 KADIR MAHO- the dacoity, this man is entered in the Calendar as a witness to  
 MED the *sooruthal* before me, he denies that he was present on that  
 and another. occasion. Witnesses Nos. 8 and 9, were not present at the trial.

These witnesses\* were present at the finding of the two boxes  
 in the jungle; No. 10 says that  
 \* Wit. No. 10, Kumurooddeen, after the prisoner's house had  
 " " 11, Ram Kant, been searched and the Darogah  
 " " 12, Nuzur Mahomed, was putting up with Rankant  
 " " 13, Sunnyassee, chow- Ghateal (witness No. 11,) a  
 keedar, villager named Nuzur Mahomed,  
 " " 14, Tookhar chowkeo- (No. 12,) came and told the  
 dar. jemadar that he had just heard of the prisoner Nazir having  
 thrown a couple of boxes into the cane jungle near the river and  
 having immediately ran away. On this, the Darogah sent the  
 jemadar to the jungle to see if the story were true. The jema-  
 dar took the witness and others with him and found the boxes  
 as described by Nuzur; on this, the Darogah was sent for and  
 on his arrival with Kadir (prisoner No. 16,) the boxes were taken  
 up from a hole in the jungle where they had been thrown and  
 opened, in one box were found silver ornaments of various kinds;  
 in the other papers apparently sunnuds and other documents  
 in the names of the prosecutor's father and grandfather; the  
 prisoner Kadir said that the ornaments were not his and ran  
 away from the midst of the searchers. The spectators assisted  
 the police to look for him, but Kadir escaped into the jungle,  
 witness No. 11, corroborates this account. Witness No. 12,  
 deposes that hearing the Darogah had gone to his village, he  
 went home and on his arrival heard from Fakcer (his brother)  
 Ashuk and Kenai witnesses Nos. 24, 23 and 22, that they had  
 seen Nazir steal out into the jungle with two boxes under his  
 arm, throw them into the jungle and make off, on this he went  
 immediately and told the Darogah, the rest of this witness's de-  
 position is the same as those of witnesses Nos. 10 and 11. Wit-  
 nesses Nos. 13 and 14, depose to the search for, and finding of,  
 the boxes in the jungle and the running away of Kadir on the  
 boxes being opened.

There is a slight discrepancy in the evidence of these men  
 regarding the time of Kadir's running away. Some saying that  
 it was when the first box was opened, others that he did not  
 make off till the box of papers was discovered. The discrepan-  
 cy is, however, of no importance.

Witness No. 15,\* identified property Nos. 1, 2, 3 and 7, as  
 belonging to the prosecutor Nu-  
 \* Wit. No. 15, Gora Byragee, bokissore; witness No. 16, was  
 " " 16, Tapa,

Wit. No. 17, Akoree,  
 " " 18, Beersadoo,  
 " " 19, Pear 2nd,  
 " " 20, Radhanath.

not present at the trial and about  
 No. 19, Pear, there was some  
 mistake. In the Calendar he  
 was called Pear 2nd, whilst the  
 only Pear present was the man

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examined as a witness to the *sooruthal* as witness No. 7, in the record, the father's name of both is the same, this man, however, denied that he knew any thing about the property and could not identify it. Witness No. 17 identified property Nos. 1, 2, 3, 5, 7, 9 and 10, belonging to the prosecutor, he also deposed to No. 6, but his recognition of this article was not complete. He was a servant in prosecutor's employ and had had frequent opportunities of seeing the ornaments before; witness No. 18, recognised property No. 11 as belonging to Radhanath tuhsildar, his master, he had pledged it to the prosecutor for Co.'s Rs. 2, at his employer's order. Witness No. 20 corroborates this statement and identifies the necklace No. 11, as being his own property.

This witness was not examined.\*

\* Wit. No. 21, Puddo.

† Wit. No. 22, Kenye,

" " 23, Ashuk,

" " 24, Fakeer Mahomed,

" " 25, Neezum Mahomed.

Witness No. 22,† deposes  
 that on Sunday, date unknown,  
 at about half-past 5 in the  
 evening, he was tending cat-  
 tle on the bank of the river,  
 when he saw the prisoner Nazir

come from the direction of his house with two boxes under his arm, he threw the boxes into a patch of cane jungle to the southward of witness No. 23's house and made off. Witnesses Nos. 23, 24 and 25, were near at the time. Witness No. 23, was weeding before his house, No. 24 was tending his cattle and No. 25 was on his way to the river with rice; at this time, Nazir Mahomed came from the opposite side of the river and witness told him what he and the rest had seen. Nuzur went off to tell the Darogah who came and reached the jungle. Witnesses Nos. 23, 24 and 25, corroborate this statement. These witnesses were subject to a strict cross-examination by the Court, and many questions were asked them by the prisoners themselves without the effect of invalidating their testimony. In reply to a question from the prisoner Nazir, Fakeer witness No. 24, stoutly denied that the prisoner had ever given the boxes into his charge.

*Prisoner No. 16.*—Kadir denied all knowledge of the dacoity and stated that the ornaments and papers belonged to him and his brother Nazir, he entered into a long statement regarding a quarrel he and his brother had with the Munthunah zemindar, who apparently was continually in the habit of worrying the prisoners by searching their premises for *lakkeraj sunauds*. The prisoner went on to say that in consequence of this conti-

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nual espionage, his brother had taken the boxes of jewels and papers to his brother-in-law, Nowsher, who took charge of them from Bhadoon till Assin. On their being taken back, Nazir gave them in charge to Fakeer Mahomed, who probably, as he was a brother of Nazir's, betrayed his trust and placed the boxes in the jungle where they were found.

*Prisoner No. 17.*—Nazir told the same story, after the boxes were recovered from Nowsher's, he kept them at home, till one day seeing a posse of men coming towards his house, he imagined that the Munthunah zemindar was again about to search his premises and accordingly took up his boxes and placed them for safe custody with Fakcer Mahomed, whom he imagined to be his friend.

Neither of the prisoners give any satisfactory account of their running away.

They called several witnesses.

No. 26,\* lives at a distance of four *coos* from the prisoner's house, cannot identify the jewels as belonging to them, but deposes that the Munthunah zemindar was always on the look out to get from them their *lakkeraj sunnuds*; he states, moreover, that when the boxes were

found, the prosecutor who was present denied that the things were his, this witness is a nephew of witness No. 27, who is the prisoner's brother-in-law. It was on the occasion of his house being robbed, that suspicion attached to the present prisoners. No. 27, deposes that he received from the prisoner No. 16 the two boxes now before the Court, the jewels are to the best of his belief, the same as those deposited with him and belonging to the prisoners, this witness also says that the prosecutor did not recognise any of the things at the time when the boxes were found in the jungle; No. 28 was not present; No. 29 could not recognise the property as that of the prisoners, he lives three *coos* off their village; Nos. 30 and 31, likewise fail to identify the property, they as well as the other witnesses say that the prisoners were, before the affair took place, respectable characters.

The fact of the dacoity, the absconding of the prisoners, the placing in the jungle by one of them, of the two boxes in one of which was a part of the plundered property are points satisfactorily proved. The witnesses for the prisoners endeavour to shew that the prosecutor did not recognise any of the property when it was first found, and that the after-recognition was the management of the police. I can find no proof whatever of this, the identification of the greater part of the property found is satisfactorily made out, and the things recovered correspond with those mentioned from the first by the prosecutor as having been

plundered from him. The defence is two-fold, first, that the boxes were not thrown into the jungle by Nazir, and 2nd that the property found there belongs to both the prisoners. In the first point, there is against the prisoners' statement the un rebutted evidence of four eye-witnesses, whilst the assertion of the prisoner, Nazir, that he gave the boxes in charge to Fakeer is entirely unsupported and of itself most improbable. Fakeer is own brother to Nuzur, who, according to the prisoner's statement has been all along most active in taking the part of the zemindar against them, is it likely then that boxes, one of which contained the very things the zemindar was continually searching for, i. e. the *sunnuds*, would have been placed under the care of one who was own brother to their avowed enemy. Again Nazir's story is inconsistent with itself, he saw a number of men coming towards his dwelling, he feared that they were the zemindar's people coming to search his house for papers, why then did he not carry off his boxes as he had done once before to his brother-in-law's house? he escaped there, it seems without difficulty, why did he not take boxes with him? and last of all why did not he when he found that it was the Darogah who had come and not the zemindarry omlah, why did he not at once after having heard that Fakeer had played him false, come forward and prove the articles to be his own?

Kadir's running away is even still more suspicious, his reason for doing so, he says, was fear of maltreatment, but this is mere assertion, had it been true, there must have been some amongst the numerous spectators who would have borne testimony to this fact, but even his own witnesses are silent on the subject of maltreatment, it is therefore but fair to conclude that none was practised.

I think then, that there is sufficient proof to convict both prisoners on the second count.

*Sentence passed by the lower Court.*—Each seven years' imprisonment with labor and irons and to pay jointly and severally a fine of Co.'s Rs. 290-3, under Act XVI. of 1850, being the difference between the amount of property stolen and the amount recovered.

I notice some mistakes in the Magistrate's Comparative Statement of evidence regarding which, a separate communication will be made to that Officer.

I tried the case alone under Act XXIV. of 1843.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoners appeal on the following grounds; i. e. that the charge has been brought against them through the machinations of the Zemindar who is anxious to deprive them of their *lakheraj sunnuds* and other papers, for which purpose, he, of his own authority, searched their house, and seized Nazir Mahomed prisoner No. 17, who, on the appli-

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cation of Kadir, was released from confinement by the police;—that being unable to succeed in his attempt to get forcible possession of the papers, the Zemindar instigated Amanollah, to charge them with burglary, and had their houses searched by the police:—that seeing a number of people advancing to his house and his brother Kadir Mahomed with them, the prisoner Nazir, thinking the Zemindar was coming again to search his premises, and had seized Kadir as a preliminary step, took the two boxes, one containing gold and silver ornaments and the other containing documents, the whole the joint property of himself and his brother, and deposited them with Fukeer Mohamed, a neighbour, from whom, by some means or other, they were obtained by the Zemindar's people, and thrown into the jungle, where they were found by the police;—that the prosecutor was sent for but was unable to identify the property, and the Darogah took it to the thannah and advertised it, but subsequently the prosecutor, colluding with the Zemindar, laid claim to it. Appellants urge further that had the ornaments been stolen and concealed in the jungle to avoid detection, the documents which, without doubt belong to them, would not have been put there also. It is added that at first no suspicion attached to the appellants, but other parties were apprehended on the accusation of the prosecutor; and that, with those parties, property, identified by the prosecutor, was found; and yet the Magistrate released such persons.

The prisoners have been convicted on the following evidence: Nazir Mahomed prisoner No. 17, was seen by the witnesses Nos. 22, 23, 24 and 25, to throw two boxes into the jungle near his own house and to run away. Information of this was given to the Darogah by Nazir Mahomed witness No. 5, who heard of the occurrence from witness No. 22. The boxes were found in the jungle, and on being opened, one was found to contain gold and silver ornaments, which have been identified by the prosecutor and witnesses as belonging to the prosecutor; the other contained documents of various kinds belonging to the prisoners. Kadir Mahomed prisoner No. 16, was present when the boxes were opened, having apparently been apprehended on the charge of burglary brought by Amanollah; and, on seeing their contents, absconded, and escaped into the jungle, and was not found till some days after, when both prisoners were apprehended together. The prisoners claim the property as their own, but having been unable satisfactorily to substantiate their claim, have, in consequence, been convicted of having in their possession property obtained by dacoity, knowing it to have been so obtained.

The case\*for the prosecution appears to be very strong, but there are some circumstances which lead us to question the credibility of the evidence. In his remarks upon the case, the

Sessions Judge, summing up the evidence for the prosecution, observes: "The identification of the greater part of the property is satisfactorily made out, and the things recovered correspond with those mentioned from the first by the prosecutor." We have carefully compared the list of recovered property with the list of stolen articles filed by the prosecutor, and are unable to come to the same conclusion as the Sessions Judge: for, in our opinion, the articles recovered, except in one or two instances out of eleven, do *not* correspond either in description or weight with those entered in the prosecutor's lists, and the name "*seela*" applied to several of the ornaments would indicate them to be used by Mahomedans rather than Hindoos. It is remarkable also that the whole of the ornaments found in the box should belong to the prosecutor, and that no ornaments belonging to the prisoners, who are apparently in good circumstances, should have been found among them, or discovered when their houses were searched.

We are disposed to believe the evidence of the witnesses Nos. 22, 23, 24 and 25, to the effect that Nazir Mahomed prisoner No. 17, placed the boxes in the jungle, and to the Darogah he admits having done so; further his statement to the Magistrate that he had deposited them with Fakeer Mahomed seems to have been an after-thought, either with the hope of implicating that witness who had given evidence against him, or of exonerating himself from the suspicion of *prima facie* guilt attached to his conduct; but it is not clear from the evidence whether he concealed the boxes prior or subsequent to the search, the evidence on this point being contradictory. We may, however, assume that he did so prior to the search, as no property was found in his house, and he was not then present, his absence being sufficiently accounted for by his absconding after concealing the boxes. Moreover the concealment of the boxes would have been unnecessary after the search had been made. The fact that one of the boxes contained *Sunnuds* belonging to the prisoners goes far to corroborate the truth of the prisoner Nazir's story that he concealed the things from fear of the Zemindar; while the manner in which the witnesses called for the defence identify the ornaments appears to us more satisfactory than the testimony of the witnesses for the prosecution who depose without hesitation to knowing the various items, and, in this respect, their evidence at the Sessions differs from that given at the previous investigation; and the witnesses for the prosecution can point out no mark (except in the case of one necklace, the peculiar pattern on which was only first referred to at the Sessions trial) whereby they can recognize them.

The prisoners have throughout denied the charge, and have assigned and proved to some extent by their witnesses a reason

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for concealing the property and papers, viz. that the Zemindar had heretofore searched their houses to get possession of their *sunnuks* and his people had plundered their property; and this satisfactorily accounts for the concealment of the *sunnuks* which would be unintelligible under any other circumstances, though no special evidence beyond the testimony of the witnesses has been adduced to prove this allegation. We do not lay much stress on the flight of Kadir. It has the appearance of a consciousness of guilt, but is not conclusive; and his conduct seems capable of explanation. In his reply to the Darogah, the prisoner ascribes his conduct to fear, because he could give no satisfactory reply to what appeared unmistakable proof of his guilt. To the Magistrate he pleads that the Darogah struck him, because he objected to the Darogah appropriating one specially prized article of property found in one of the boxes, and this statement is confirmed by the evidence of some of the witnesses for the defence.

Little credit, however, can be given to the evidence for the prosecution for the following reasons. The prosecutor and witnesses depose that when the boxes were found and opened the prosecutor was *present, and then and there identified the property*; and the prosecutor in his deposition to the Magistrate adds that when he claimed the property, Kadir ran away. On reference to the Darogah's report of 8th February, which gives the first intimation of the prisoners being implicated, we find *no mention of the prosecutor being present*, when the property was discovered; on the contrary the Darogah says that he issued an *ishtakar* to discover the owners of the property, which he would not have done had the prosecutor, being present, identified it at the time; nor would he have in that report used the term "*sundehuk*" (suspicious) in describing it, had it been claimed by the prosecutor then present. Further, the Darogah reports that on the previous day, the 7th of February, the prisoner had been apprehended by the jemadar and sent in, and that on the date of his report (8th) the prosecutor, Nubokishto, came to the thannah and identified the property. On reference to the second information on oath given by the prosecutor on the 8th, we find the purport of the examination by the Darogah to be as follows, *i. e.* "as the property discovered was suspicious he (the Darogah) had advertised for the owners and brought it to the thannah; and after the prisoner's examination had that day been taken, you (prosecutor) appeared and identified the articles as part of the property plundered in the dacoity." This deposition is dated 8th February, but the examination of the prisoners was not recorded till the 9th; and it is evident from the question put, that the prosecutor was *not* present when the property was found, nor could he consequently have identified it at the time; and his statement and that of the witnesses

on this point is evidently false and throws discredit on their testimony. It may further be remarked that the reason assigned by the prosecutor for being present at the search can scarcely be credited. He lives four *coss* distant from the prisoner's house; and hearing that the Darogah was about to search their houses on a charge of burglary made by Amanoollah, he joined him in hopes that some of his property plundered by the dacoits might turn up.

The Court draw the attention of the Sessions Judge and Magistrate to the Darogah's report of 8th February, 1857, which, owing to an absence of dates in the proper places, is almost unintelligible. This is the first notice on the record of the complicity of the prisoners in the dacoity at the prosecutor's house. The Darogah reports that after the houses of the prisoners were searched, he obtained information that Nazir had thrown two boxes into the jungle, and that accompanied by the villagers and Kadir, he went and found them; and Kadir then absconded. In the 2nd paragraph, the Darogah goes on to say, "After that, yesterday, the 7th, the jemadar apprehended the prisoners on the banks of the Teesta and sent them in;" that being night he did not then examine the prisoners, but did so the next morning; that is the day of the report (8th,) when they claimed the property as their own; and that *subsequently* the prosecutor came to the thannah and identified the property. The date on which the prisoners' houses were searched is not mentioned, and the Court are left to infer that it was accomplished either the day on which the report is dated, or the previous day, but under either supposition, difficulties arise which cannot be explained from the record. For instance, it is evident that Nazir threw the boxes into the jungle the same day his house was searched, and Kadir on the same day absconded, and neither were apprehended for "*sometime afterwards*," as stated by the Sessions Judge; or till the 7th of February, as may be gathered from the Darogah's report. On the supposition that the search and discovery of property took place on the 7th or 8th, there is an inconsistency in the report, which is not cleared by the record; and further while the Darogah in his report states that the jemadar apprehended the prisoners on the 7th, the Calendar shows that they were apprehended on the 9th.

The attention of the Sessions Judge and the Magistrate is also called to the very bad writing in which the depositions have been taken down, rendering it a difficult task for the *amlah* of the Court to decipher them and causing waste of time to the Court. (See Circular Order No. 16, 30th June, 1857.) The Court are also led to suppose that the evidence of the witnesses was first taken by the Magistrate's *amlah*, and the witnesses were subsequently examined by the Magistrate, from the fact

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1857. that questions previously recorded and answered were *put again* in a subsequent part of the examination of some of the witnesses.
- October 21. Although the Circular Order of this Court No. 58, of 12th December, 1809, permits evidence to be recorded by the Magistrate's *amlah* in his presence, the practice, particularly in heinous offences, is very objectionable, and from a careful perusal of the Circular Order, the Magistrate will observe that the *practice* is not sanctioned in cases of a *heinous* nature.
- Case of KADIE MAHOMED and others. The prisoners are acquitted, and ordered to be released without delay.

## PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

## GOVERNMENT AND JUGGOBUNDOO CHUTTERJEEA

*versus*

Backergunge.

MOOMTAZOODEEN CHOWDAREE.

1857. CRIME CHARGED.—1st count, accessoryship after the fact of a riot attended with the severe wounding of the prosecutor and plunder of property to the value of Co.'s Rs. 2,264-4; 2nd count, oppression and illegal confinement of the prosecutor and his son, Shamachurn Chutterjeea; 3rd count, forcibly opposing and resisting the police whilst in the execution of their duty.
- October 23. Case of MOOMTAZOODEEN CHOWDAREE.

CRIME ESTABLISHED.—Illegal confinement of the prosecutor, Juggobundoo Chutterjeea and his son, Shamachurn Chutterjeea.

Prisoner convicted: pleas of Counsel being overruled. Remarks on measure of punishment, and conduct of police.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 1st of September, 1857.

*Remarks by the Sessions Judge.*—In concurrence with the *fatwa* of the Law Officer, I convict the prisoner on the second count of the Calendar, and have sentenced him as shewn below. I agree with the Law Officer that there is not sufficient evidence to justify a conviction on the first and third counts of the Calendar.

The night attack upon the house of the prosecutor by a large body of armed men, the plunder of his property of considerable value, the severe wounding of the prosecutor, the forcible carrying off of the prosecutor and his son, have been noticed in my remarks upon a previous trial, and the principal party con-

cerned in this attack, plunder, &c., has been punished and the sentence of this Court upheld\* in appeal.

The following is an abstract of my remarks upon the original trial. Vide case No. 4, of statement No. 6, for September, 1856.

This case even for this district is a bad one. The plaintiff, a respectable brahmin, has been grievously oppressed. The attack on and plunder of his house at night by a large body of armed men, the severe wounding of the plaintiff and the fact of he and his son having been shamefully dishonored and forcibly carried off and kept in illegal confinement for several days, are sufficiently proved by the evidence of the witnesses for the prosecution. The defendant who took the most active part in this outrage, or Nilkomul Chuckerbutty, has been convicted and imprisoned before in a case of affray attended with homicide, and the existence of the previous enmity between him and the prosecutor has been established by an inspection of several cases called for by this Court from the Magistrate's office.

The witness, Obhoy Chutterjeea who is a servant of Moom-tazodeen Chowdaree, the party in whose house the plaintiff and his son were illegally confined, has given evidence in this case directly contrary to the testimonies of the witnesses Nos. 24 and 25, Gourchunder Bhurtacharge and Juggutchunder Chowdaree. I fear that Obhoy Chutterjeea was not independent enough to speak the whole truth.

The prisoner in this trial is a zemindar, a resident of Katik-pore in the district of Dacca, he has evaded justice for nearly a year, and it was only when his estates and personal property were attached, that he surrendered to take his trial.

The statements of the prosecutor and his son, supported as they are by the evidence of the witnesses, No. 4, Gourchunder Bhurtacharge and No. 7, Juggutchunder Chowdaree are, in my opinion, sufficient for conviction.

As observed by the Law Officer, there are certainly discrepancies in the evidence of the remaining witnesses for the prosecution. The fact is that the prosecutor has attempted to prove too much. Native prosecutors are very apt to believe that it is the quantity and not the quality of the evidence which ensures a conviction, many of the witnesses who have deposed in this case are the servants and dependents of the prosecutor and they have certainly deposed to facts which it is very improbable that they should be personally cognizant of, but the evidence of the two witnesses, i. e. No. 4, Gourchunder Bhurtacharge and No. 7, Juggutchunder Chowdaree is not open to this objection. Juggutchunder Chowdaree is the ser-

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\* Vide the proceedings of the Sudder Nizamut Adawlut on the trial of Nilkomul Chuckerbutty and others, dated 14th January, 1857.

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vant of the prisoner, and Gourchunder Bhurtacharge is a person of respectability, and it is very evident from the trouble the police had in securing his attendance that he did not willingly depose in this matter.

The prisoner pleads *not guilty*, and states that he was at Dacca at the time the prosecutor and his son allege they were in confinement in his house at Katikpore.

In this country, evidence to an *alibi* is to be purchased like any other commodity in the market. I utterly discredit the prisoner's plea. Had he been at Dacca, a man in his position in society, a zemindar, and respectably connected, would have had no difficulty in substantiating such a plea by the most unexceptionable evidence.

The prisoner has cited three Mahomedan witnesses, Hyedurjan Meah, No. 22, Ohazoodin No. 23, and Dagoo Khullifa, No. 24. These witnesses are not respectable, and the way in which they speak as to dates after an interval of more than a year gives rise to a suspicion that their evidence is tutored, in short that they are hired witnesses. The witness No. 23, Dagoo Khullifa can remember the dates, upon which more than a year ago, he received a commission from the prisoner to make some "*choorees*" for him, and yet cannot remember the date or the month of the last "*Eed!*"

Further I cannot reconcile the conduct of the prisoner in evading justice so long, with his defence; which, if a true and honest one, would, of all other defences, have ensured to him a certain acquittal.

The prisoner was apprehended by the Dacca police and gave security for his appearance before the Magistrate of this district, but he did not appear according to the terms of the security-bond, and his security who was doubtless well paid for running the risk had to forfeit the sum of Rs. 200.

It is true, that the prosecutor and his son deposed before the police, that they were not kept in confinement by the prisoner, and that they had no charge to make against him, but previous to recording these depositions the police had received information that the prosecutor and his son had obtained their release from the confinement to which they were subjected by the prisoner by solemnly promising not to bring any charge against the prisoner.

The spiritual adviser the *gooroo* of the prosecutor, the witness No. 4, was sent for by the prisoner, and the prosecutor, who is a respectable brahmin, was made to touch the feet of his *gooroo* and to swear that he would bring no charge either by himself or through his son against the prisoner.

Before the police the father and son do not implicate the prisoner, before the Magistrate and in this Court they do, and it must be remembered that when they were examined by the

Magistrate, they must have been aware that the police had reported to the Magistrate that their spiritual teacher and Juggutchunder Chowdaree were acquainted with the particulars of the transaction which led to their release from confinement, and that if these two parties were sent for and gave evidence, the whole truth would come out. Further, the police had reported to the Magistrate that no confidence could be placed in that part of the depositions of the prosecutor and his son which absolved the prisoner.

Of the remaining witnesses to the defence No. 15, Gungapershad Muzoomdar is the servant of the prisoner, this, though not admitted by the witness, is apparent from the evidence of the witness No. 7, Juggutchunder Chowdaree and the report of the Darogah of thannah Moolfutunge.

Ramcoomar Chowdaree No. 16, is the brother of the prisoner Dewan Gour Chowdaree, this the witness admits, Kallychurn Biswas No. 19, is the servant of a near relation of the prisoner.

*Sentence passed by the lower Court.*—Imprisonment without irons for three years and to pay a fine of one thousand rupees on or before the 1st August, 1857, or in default of payment to labor until the fine be paid or the term of his sentence expire.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The prisoner has been convicted of illegally confining the prosecutor and his son.

Messrs. Money and Allan, for the appellant, urge that the prosecutor and his son stated on oath before the Darogah that prisoner had *not* confined them; and although they subsequently deposed before the Magistrate and the Sessions Judge that he did, no reliance can be placed on depositions so contradictory; the Counsel further urge that the witnesses Nos. 4 and 7, are the only witnesses on whose evidence the Sessions Judge has relied, and that their evidence is contradictory and interested. It is also pleaded that, with exception to an old and adjusted quarrel, the prosecutors and witnesses can bring forward no possible motive for prisoner illegally confining the prosecutor and his son, while the statements of both of these shew that the conduct of the prisoner, taking it as they set it forth, was that of one who sheltered rather than imprisoned, and relieved rather than injured them. It is lastly urged that there is fair proof of the *alibi*, which, under the very doubtful circumstances of the case for the prosecution, should be allowed weight in favour of the prisoner.

The contradictions in the statements on oath of the prosecutor and his son as to prisoner illegally confining them, would necessarily destroy reliance on their testimony, if the circumstance they state as the cause of their first denying prisoner's

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1857. complicity were not fully supported by other consistent and credible testimony, and if the fact of the duress of prosecutor and his son at the hands of prisoner were not proved by other independent reliable direct evidence, as well as by collateral proof. The direct evidence is that of witness No. 4, (the *gooroo* of the prosecutor,) and witness No. 7. Their evidence clearly proves the illegal duress, and that prosecutor swore not to accuse prisoner; the oath being taken at the prosecutor's *Gooroo's* feet and on the prosecutor's son's head. The objection to the evidence of witness No. 4, is to the effect that while the Sessions Judge terms him respectable, the witness admits he resided at a prostitute's. But the witness No. 4, merely says that when he came to Burrisal he lodged in the house of such a person. This is not an uncommon practice in this country, nor does it affect the witnesses' credibility, in the manner contended for by Mr. Money, having in view probably the habits of European life. As to witness No. 7, he is certainly the Put-waree and Land agent of prisoner, albeit he also holds lands from prosecutor, but it is not shewn that he holds them on such unusual or profitable terms as to make him such an interested witness that his evidence should be distrusted. It is urged that the prosecutor's son, witness No. 1, when on the 17th June, 1856, he named five witnesses as those who could depose to the Magistrate to the duress, did not name witnesses Nos. 4 and 7. But the context of the deposition referred to shews that after witness No. 1, had deposed fully to the acts of witnesses Nos. 4 and 7, when present at the duress and release, he named the others as *also* cognizant of those facts; he therefore could not mean Nos. 4 and 7, were not witnesses.

To proceed to the collateral proof. It is clearly shewn by the Nizamut Adawlut Report, 14th June, 1857, pages 6 and 7, that the prosecutor's charge against other prisoners for the violence to his person and property (which forms a portion of this same transaction) was mainly substantiated, and resulted in a conviction in this Court. It is clearly in evidence that the prisoner's people were concerned in that violence. It is further on the record that the witness No. 10, knew of, and witnesses Nos. 3, 8 and 9, were more or less spectators of the duress and release of the prosecutor and his son. As to the absence of motive in the prisoner, it is quite possible and indeed deposed to, that the original quarrel was that of Nilcomul, the principal prisoner in the Nizamut Adawlut case of the 14th January, 1857, before cited. At the same time it is not incompatible with that fact that prisoner should have lent his aid, and allowed the illegal duress of prosecutor and his son on his premises. But irrespective of the probability, I think, the actual fact of the duress charged is quite sufficiently *proved* by the evidence I have before referred to.

I have carefully read the evidence to the prisoner's defence of *alibi*, and concur in the view of the Sessions Judge as to its insufficiency to rebut the evidence for the prosecution. Nor is it of such a character as to lead to any other reasonable conclusion than that the prisoner could not have been concerned in the offence with which he is charged.

The Counsel for prisoner urge in mitigation of the measure of punishment that the statements of the prosecutor and his son shew the prisoner attended to their wounds and gave them food. Making all allowance for these statements, it is also *my* duty to refer to the prevalence in Eastern Bengal of the mischievous and dangerous practice of violently removing persons from their own houses, and carrying them from place to place, and holding them in illegal duress; and to adjudge the punishment with a view to prevent such mal-practices. I therefore uphold the sentence and reject the appeal.

The police are shewn by their own statements and by the record, to have been quite passive and insufficient, and to have been, for the time, defied with impunity.

PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge*.

GOVERNMENT

*versus*

LALLCHAND GOWREE (No. 9,) POSUN GOWREE (No. 10,) BHOOKRUN GOWREE (No. 11,) AND KALA BURHYE (No. 12.)

Bhaugulpore.

CRIME CHARGED.—No. 9, perjury in having on the 12th and 20th May, 1857, deposed under a solemn declaration taken instead of an oath (which first deposition was attested on the 14th Idem) in his case against Parus, &c. before the Assistant Magistrate, Mr. Simson, that he had 26 Rs. tied in a corner of his *dhotee* which the prisoner Parus cut open and abstracted and that the cut *dhotee* is with him; such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

*Prisoners Nos. 10, 11 and 12.*—Perjury in having on the 20th May, 1857, deposed under a solemn declaration taken instead of an oath before the Assistant Magistrate Mr. Simson, that Parus had cut the *dhotee* of Lallchand plaintiff with a *hunsooa* and *kuchea* and abstracted the Rupees tied in it. Such deposition being *false* and having been intentionally and deliberately made on a point material to the issue of the case.

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Prisoners acquitted; the inferences on which prisoner was convicted below, not being considered sufficient proof of guilt.



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CRIME ESTABLISHED.—Perjury.

October 30. Committing Officer.—Mr. W. Ainslie, Magistrate of Bhaugulpore.

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Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 15th July, 1857.

*Remarks by the Officiating Sessions Judge.*—There was a petty case of assault and plunder, in which prisoner No. 9, figures as the complainant and Nos. 10, 11 and 12, his supporting witnesses pending trial before Mr. Assistant Simson. The nature of the case stands fully explained in the charge and decision entered in the Calendar by the committing officer as follows.

The prosecution for perjury has been instituted on the representation of Mr. Assistant Magistrate Simson, who, in his decision of 20th May last, has very clearly shown that the story of Lallchand, the plaintiff, in the case before him, must have been, as far as the alleged robbery or snatching away of the money, false, that officer states that : “The evidence in this shows discrepancy as to the instrument used by defendant in cutting plaintiff’s *dhotee* when the Rs. (26) were abstracted ; as is stated. Bokram, 4th witness going to some length to explain that it was not a ‘*husssooh*,’ (as shewn before him) that was used, until prompted by plaintiff, when he stated that *it was* : a mistake, however, would easily be made in a ‘dark night’ as to an instrument used, but straight or circular, it was a knife, and the cut made with it sharply according to all statements. The plaintiff states he has only two *dhotees*, the uncut one is produced in Court and he has been ordered to put it on in place of the one from which he says the Rupees were taken. This *dhotee* I detain for the Magistrate’s inspection. The Rupees are stated to have been tied up in one corner of the *dhotee* and tacked into his waistband. The defendant is said to have snatched out the end of the *dhotee* and holding the tied up Rupees with one hand to have cut the cloth with the other, and run away. This would have required great force and a sharp instrument, but any how the piece cut off *must have been* somewhat in the shape of an equilateral triangle of which *the corner* of the cloth would form the apex, at any rate such a mode of cutting *could not* have produced a perfect parallelogram as from what is now shewn the fragment would appear to be. It is possible that the defendant may have offered a small sum, as spoken to by Girdharee (3rd witness,) to plaintiff to hush up the matter through fear of possible consequences. Under the circumstances, I dismiss the charge *versus* Parus without hesitation, and beg to send the plaintiff Lallchand and first, second and fourth witnesses *Kullah*, Poshun, Bokrun, to the Magistrate in order that, if he thinks the case strong enough against them, they may be committed for perjury.

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"The false allegation was a very material one as it tended to enhance the offence from a simple misdemeanour of the most trifling kind to something, very nearly if not quite, amounting to felony. That this is a daily practice is no defence. Could we succeed in as clearly proving the exaggeration in each case to be false the practice would soon come to an end. But the general failure to disprove these is no reason for passing over the few cases where a sufficient evidence is forthcoming. I therefore commit the defendants to the Sessions."

To the foregoing there is little more to add, than the prisoner Lallchand No. 9, before this Court hesitatingly quibbled about the *dhotee* not being in the same state as now produced in the Sessions Court, as it was when handed in by him to the Assistant Magistrate, but he stood self-convicted of this falsehood when Mr. Simson being summoned to this Court deposed to its unaltered state, and Lallchand had nothing further to say. I have taken the precaution to have this *dhotee* sealed up, under prohibition of its being opened or destroyed except on proper authority.

The Jury\* unanimously convict the prisoners on the counts charged, in which, concurring, they have been sentenced as follows.

\* Gursepershad, vakeel of the Moonsiff of Bhaugulpore; Behareelall Do. of ditto; Syudalli Abass of Khungerpore, Bhaugulpore; Kullunder Alli Chureylen, ditto.

*Sentence passed by the lower Court.*—No. 9, seven years' imprisonment with labor and irons. Nos. 10 to 12 each to five years'

imprisonment with labor and irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The petition of appeal only prays for a reference to the record, and adduces no special grounds of objection to the Sessions Judge's decision.

I have carefully perused the original depositions of the prisoners, in the case before the Assistant Magistrate, Mr. Simson, on which the charge of perjury is founded.

To support that charge, as a penal one, it is necessary that the perjury should be wilful and material to the issue of the case.

The prisoner No. 9, (originally prosecutor,) on the 12th May, deposed that the party he prosecuted had taken (*chin lea*) his money. On the 20th he deposed that his *dhotee* had been cut, and Rupees taken, (*kat ke chin lea*), and with a sickle (*hussoa se*.)

The prisoner No. 10, (originally a witness for the prosecution,) deposed on the 20th May, that the prosecutor's *dhotee* was cut with a sickle (*hussoa*) and the Rupees taken, and that it was not so dark that he could not see.

The prisoner No. 11, (also a witness for the prosecution) stated that the *dhotee* was cut, that two *ghurees* of the night

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had passed, that it was dark ; that the cutting of the *dhotee* was done with a *kuchea* or small sickle-shaped knife ; and subsequently he said with a *hussoa*. I do not see on the record that this prisoner in saying this does so, "*going to some length*" to explain that it was not a *hussoa*, as stated by Mr. Simson.

Prisoner No. 12, (also a witness for the prosecutor) says the *dhotee* was cut by a *kuchea* and that it was a dark night.

The evidence adduced to support the charge of perjury, as entered in the Calendar is that of witness No. 1, who recorded the depositions, and of witnesses Nos. 2, 3 and 4, who speak to the enmity of the then prosecutor, (prisoner No. 9,) with the party he prosecuted. There is also the testimony of Mr. Simson and witness No. 1, who speak to the identity of the *dhotee* produced at the Sessions trial ; i. e. that it was *the* one produced by prosecutor before Mr. Simson in the original case.

The prisoners do not deny the depositions recorded as theirs, but aver they spoke the truth, and are of good character ; and produce witnesses to this last point.

The ground of commitment for perjury is apparently the proof to be found in the *state* of the *dhotee*, or in the words of the Calendar, "this would have required great force and a sharp instrument, but any how the piece cut off must have been *somewhat* in the shape of an equilateral triangle of which the corner of the cloth would form the apex. At any rate such a mode of cutting could not have produced a *perfect* parallelogram as from what is now shewn, the fragment would *appear* to be."

On inferences such as these (and these are not of the most positive kind, as the words I have underlined shew) wilful perjury cannot be legally declared to be established ; and I see no other proof adduced. Nor am I prepared to say the inferences are correct in themselves, or not, on the grounds on which they are made. Possibly the number of the folds, might make a difference in the result as to the shape of the cut cloth.

Be that as it may, assuming the inferences in the words in inverted commas to be correct, I think they are insufficient for a conviction. If there be an error in the statements of the prosecutors, as to the instrument being *hussoa* or *kuchea*, or other article capable of cutting cloth, I cannot consider that, because the mode of cutting *could not* have produced a perfect parallelogram, in the view of the Committing Officer, such a circumstance or such an opinion, unsupported by direct evidence, can justify a conviction for perjury. I also think that so long as there is no direct proof that there was *no* cutting of the *dhotee* said to be cut, or that no instrument capable of cutting was used, the point is not so material to the issue of the case as, under the circumstances above detailed, can sustain a conviction for wilful perjury.

I acquit the prisoners, and direct their release.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

OBHOY PURAMANICK (No. 1,) AND MUDDOSOODUN DOSS (No. 2.) 24-Pergunnahs.

CRIME CHARGED.—No. 1, 1st count, perjury, in having on the 20th June, 1857, corresponding with 17th Assar, 1264, B. S. deposed on solemn affirmation taken instead of an oath under Act V. of 1840, before the Moulvee of the 24-Pergunnahs in the case of Muddosoodun Doss *versus* Mullika Raur and others (“charge, abduction of prosecutor’s wife) that *on the 8th or 9th of the month of Jyest last, that on my way to the house of Shiboo Mullick of Calcutta, I saw prosecutor’s wife in the house of a prostitute name unknown in Shobah Bazar Buttolah, I immediately returned, and taking prosecutor, afterwards says prosecutor, his mother, and two others with me, and went to the house of the said prostitute; that the prosecutor’s wife on seeing prosecutor began to weep, and on being questioned by prosecutor said that the defendants had enticed her away, stripped her of all her ornaments and had left her in the said prostitute’s house.* Prisoners convicted. Reasons for not agreeing with the recommendation of the Sessions Judge for mitigation. Remarks on passing of sentence of one year, with reference to Clause 3, Section 9, Regulation XVII. of 1817.

And in having again on the 2nd July, 1857, corresponding with 19th Assar, 1264, deposed on solemn affirmation taken instead of an oath under Act V. of 1840, before the said Moulvee that “*I do not know any thing of the case of abduction of the prosecutor’s wife.*” One or the other of such depositions being false and having been intentionally and deliberately given on a point material to the issue of the case; 2nd count, perjury in having, on the 30th June, 1857, corresponding with 17th Assar, 1264, B. S. deposed on solemn affirmation taken instead of an oath under Act V. of 1840, before the Moulvee of 24-Pergunnahs in the case of Muddosoodun Doss *versus* Mullika Raur and others (charge of abduction of prosecutor’s wife) that “*my name is Obhoy alias Kubeer Puramanick,*” whereas his real name was not Kubeer Puramanick. Such deposition being false and intentionally and deliberately given on a point material to the issue of the case.

No. 2. Subornation of the abovementioned perjury.

Committing Officer.—Mr. C. F. Montresor, Officiating Magistrate of the 24-Pergunnahs.

Tried before Mr. E. Latour, Sessions Judge of the 24-Pergunnahs, on the 11th August, 1857.

*Remarks by the Sessions Judge.*—The circumstances of the case are as follows: The prisoner, Obhoy Puramanick before

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the Magistrate stated that he concealed his real name and personated Kubeer and gave evidence at the instigation of Muddosoodun, prisoner No. 2, and his attorney, whose name he does not remember, had told him to say his name was Kubeer, and prisoner No. 2, gave him a rupee. This was done because Kubeer was absent. That he gave his name as Obhoy, when his deposition was taken, but owing to the intimidation of the plaintiff and his attorney, he added the *alias* Kubeer. He had no knowledge whatever of the facts he swore to.

Muddosoodun, prisoner No. 2, acknowledged before the Magistrate substituting Obhoy for Kubeer, as the latter was absent, at the instigation of Jugroop Chowdry Muktear with whom he subsequently quarrelled and another Muktear was employed at the time of writing the deposition. Obhoy had no actual knowledge of the facts he swore to.

Witnesses Nos. 1\* and 2,† speak to

\* Deenoonath Chatterjees.

† Syed Abdool Ally.

‡ Esanchunder Singh.

§ Muddosoodun Ghose.

|| Ramdhun Doss.

¶ Jodishteer Doss.

the above confessions.

Witnesses Nos. 3‡ and 4,§ to the depositions of 30th June and 2nd July.

Witnesses Nos. 5|| and 6,¶ that the true name of defendant No. 1, is Obhoy not Kubeer. There are two persons of that name in the village.

The defendant No. 1, was examined as a witness in a case of abduction instituted by Muddosoodun Doss and in his deposition stated that on the 8th or 9th of Jyet, he saw the prosecutor's wife in the house of a certain prostitute at the Shobabazar, and returned and fetched the prosecutor and took him, his mother and two witnesses with him, to the house of that particular prostitute, when his wife seeing him began to weep and on being interrogated, declared that the defendants had enticed her away and stripped her of all her ornaments, &c., and left her in the prostitute's house.

In the confessions of both prisoners it is stated that this deponent had no knowledge whatever of the facts thus detailed.

In this Court defendant No. 1 states that he gave evidence at the instigation of the plaintiff and his mooktear, the latter threatening him with a fine of 25 Rs. if he did not. That he was tutored to state the facts he deposed to, by the same parties, of which circumstances he had no knowledge whatever.

Defendant No. 2, states, that in the case of the abduction of his wife, he named Kubeer Bagdy of his village as a witness, but he being absent, his mookhtear, Juggutroop Chowdry, told him "he had constantly personated evidence successfully, substitute Obhoy Puramanick and I will pass him through," so he did so and at his suggestion it was stated, Obhoy *alias* Kubeer,

and a Mussulman Mooktear also similarly tutored him. He was present at the deposition.

The defendant No. 1 brings three witnesses to prove that he gave evidence under the tuition of the Mooktear. Nothing is proved in exculpation.

The assessors convict the prisoners. The defendant No. 1 gave evidence on a point material to the issue. He deposed to facts the establishment of which might have led to the punishment of the defendants, and the defendant No. 2, procured such evidence, the same being material to the issue of the trial before the Magistrate. I concur in the conviction of the prisoners.

Both the prisoners are ignorant, illiterate people and my impression is, that the real culprits, are the attorneys in the case, and the Magistrate will do well to rid his Court of them.

I proceeded to pass sentence of one year upon the prisoners, but the law requiring that in such a case, reference should be made to the Nizamut Adawlut, I have suspended the execution of the warrant and submit the record with a view to the Court's orders as to the punishment proposed by this Court.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The Resolution of this Court of the 12th September, (Present: H. T. Raikes, Esquire,) required this case to be remanded, as the Sessions Judge had "not found in what respect the falsehood or false personation was material to the issue in the case before the Court, where the prisoners were examined as witnesses." The Sessions Judge has now stated as to prisoner No. 1, that the perjury was on a point material to the issue of the case, because "he deposed to facts, the establishment of which might have led to the punishment of the defendants."

On the *first* count against the prisoner No. 1, it is clearly proved that he at first gave evidence as to certain material facts having occurred, as within his knowledge, and then clearly stated that he had *no* actual knowledge of such facts. On the *second* count, the prisoner No. 1, is clearly proved to have sworn that he was one Kubeer, when he was proved not to be, and not known as, Kubeer. One Kubeer was called as a witness for the prosecution, and this prisoner No. 1, who was *not* Kubeer, appeared as such witness, Kubeer. The Sessions Judge does not expressly answer the question put in the Resolution above noticed, in regard to this count against prisoner No. 1, i. e. the Sessions Judge does not say how the false personation was material to the issue of the case. But it is patent on the record that prisoner No. 1, representing himself on oath to be a witness alleged to be one for the prosecution, came as such, and deposed to certain prominent facts in corroboration of the statement of prosecutor; whereas he was *not* the witness alleged to be the one called for

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1857. the prosecution, as knowing those facts, viz. one Kubeer; and  
 October 30. his false personation was material to the issue of the case, as it  
 tended to obtain *credibility* for the false *deposition* he made, as a  
 witness, to such prominent facts in corroboration of the prosecu-  
 Case of tor's statement.  
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 MANICK  
 and another.

I therefore convict prisoner No. 1, on both counts.

Prisoner No. 2, is charged with subornation, and confesses it, and was present at the false personation and deposition of prisoner No. 1. Prisoner "No. 2, procured such evidence," the Sessions Judge records, "the same being material to the issue of the trial before the Magistrate." It has been before shewn that the evidence of prisoner No. 1, was material to the issue of the trial in which this prisoner No. 2 was prosecutor; and it is quite clearly proved that prisoner No. 2, suborned such evidence, and that it was wilfully false, both as to the facts, and the personation.

I convict prisoner No. 2, therefore, of subornation of perjury.

As to the measure of punishment, the Sessions Judge recommends mitigation to one year, because, *firstly* "both the prisoners are ignorant and illiterate," and *secondly* "the real culprits are the attornies."

The first reason is, in my opinion, insufficient. A very large proportion of the class from which witnesses come are "ignorant" and "illiterate." But here we have prisoner No. 1 deliberately deposing to prominent facts as within his knowledge in corroboration of prosecutor's statement, of which facts he distinctly states afterwards he had *no* such knowledge; and *more-over* falsely personating a witness, named to prove those facts for the prosecution, but who never appeared. I do not see adequate grounds for mitigation in this case. The same reasoning applies to the case of prisoner No. 2; and in his case, subornation of itself fairly admits the presumption of an amount of knowledge opposed to the plea of ignorance.

To mitigate for the second reason when the first is considered insufficient, would tend to promote rather than check the very evil that second reason demonstrates.

Lastly, the prevalence of perjury demands exemplary punishments.

I sentence the prisoners, Nos. 2 and 3, to three years' imprisonment, with labor and irons.

The Sessions Judge writes in this case, in para. 13 "I proceed to *pass* sentence of one year upon prisoners."

The attention of the Sessions Judge is requested to Clause 3, Section 9, Regulation XVII. of 1817, which provides that the Sessions Judge should record the minimum sentence in the preceding Clause 2, viz. *three* years, and not the mitigated sentence he may wish to propose.

# SUMMARY CASES.

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OCTOBER,

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SUMMARY CASES.

OCTOBER, 1857.

PRESENT :

C. B. TREVOR, AND D. I. MONEY, Esqs.,  
*Officiating Judges.*

GOVERNMENT

*versus*

BUNGSHEE GHOSE ETAKATTA.

Nuddeah.

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(CRIME CHARGED.—*Trial No. 3.*—Wilful murder of Kisto Ghose son of Degumbery Ghosanee, prosecutrix.

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*Trial No. 6,* Perjury in having on the 26th of December, 1856, corresponding with 13th Pous, 1263, B.S. deposed under a solemn declaration taken instead of an oath before the Deputy Magistrate of Sudder Station that: "I am a servant, viz. a Koyal of Rampershad Roy's *golah* house in the village of Romanathpore. On the night of 7th Pous, I was sleeping on the *golah* house, after midnight I heard the village chowkeedar Godadthur Chung calling out that he had caught a thief in the act of stealing *ghan* from the *golah*. I got up, went to the chowkeedar and saw that he had seized Kisto Ghose of Bhojunghat. I went also and seized Kisto on which Kisto cried out! 'They are killing me, if any one is there, come and rescue me,' at that time Sham Dai, Pitom Dai and Shorooop Doss came there and, with the intent of rescuing the abovementioned Kisto, beat me and Godadthur chowkeedar with sticks. We, on this shouting out aloud, the villagers Bhogwan Ghose, Gonesh Ghose and Sreedhur Ghose came, and Sham Dai and the others attempting to beat them with sticks, Bhogwan Ghose and others beat the above mentioned defendants, as I and the chowkeedar were standing with Kisto in our charge, Sham Dai and the others intending to beat the chowkeedar with their *latties*, those blows instead of striking the chowkeedar fell on the head of Kisto and wounded him, at that time the above Sham Dai, Pitom Dai and Shorooop Doss fled, at that time also we saw that there was a bundle of *ghan* inside the hedge and two bundles outside the hedge. The above chowkeedar collected the *ghan*, and placed the *ghan* and Kisto in the charge of us all, and next morning gave information at the thannah. That day the thannah mohurer came to the village and investigated the case. This is my evidence. The persons sent in by the Darogah are my witnesses, I cannot write. The amount of my *ghan* is about one *bish* and six and three quarter

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Remand, in order that Sessions Judge should pass a separate sentence for each separate conviction, with reference to Regulation XV. of 1814 and Regulation II. of 1834.

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*cuttaks* value 4 Rs. I lay that complaint of theft of *dhan* against the above Sham Dai, Pitom Dai and Shorooop Doss." Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

*Trial No. 9.* Wilful murder of Janokee Ghosanee.

CRIME ESTABLISHED.—*Trial No. 3.* Culpable homicide of Kisto Ghose.

*Trial No. 6.* Perjury. *Trial No. 9.* Culpable homicide of Janokee Ghosanee.

Committing Officer.—Mr. A. J. Elliot, Magistrate of Nuddeah.

Tried before Mr. R. M. Skinner, Sessions Judge of Nuddeah, on the 21st March, 1857.

*Remarks by the Sessions Judge.*—*Trial No. 3.* From the evidence for the prosecution as well as the confessions of the prisoner No. 9, it is clear that Kisto Ghose died, after the interval of a day, from the effects of a blow on the head which the prisoner, with whose wife the deceased had illicit intercourse, inflicted with a *lattee*, on finding witness No. 1,\* Kisto Ghose near his house at midnight, 20th

\* Wit. No. 1, Bungshee Ghose  
Katta.

December. The confessions both in the mofussil and foudjary have been duly attested. The Law Officer's verdict is guilty of *kull-shobeh-amud*.

*Trial No. 6.* It is also proved from the evidence of the above-alluded to witness, Bungshee Ghose Katta, and the above-noticed duly-attested confessions of the prisoner and the testimony of Bykantnath Mookerjea and Bhogwan Chuprassy in Calendar No. 6, that the prisoner in order to screen himself, gave knowingly and intentionally false evidence on declaration taken instead of an oath, that the deceased met his death-blow from a comrade who had accompanied him to commit a theft. The Law Officer has pronounced him guilty of perjury.

*Trial No. 9.* It is further proved by the evidence of eye-witnesses† and from the testimony of the Assistant Surgeon and hearsay witnesses,‡ and witnesses§ to the inquest on the corpse of Janokee, (the prisoner's wife,) and from the above-cited confessions, that the prisoner kicked his wife on the belly, for not nursing the child, which was crying, on 17th January last, from the effects of which kick she died. But it appears from the Civil Assistant Surgeon's evidence that the blood-

† Wit. No. 1, Bromo Bewa Ghosanee,

„ „ 2, Mookta Ghosanee,  
„ „ 3, Prosunno Ghose  
Chokra.

‡ Wit. No. 17, Issur Ghose,  
„ „ 18, Shorooop Ghose,  
„ „ 19, Seeroo Ghose,  
„ „ 20, Lukhun Ghose,  
chowkeedar.

§ Wit. No. 6, Tarunchunder Banerjea,

„ „ 7, Woomeschunder Mowlik,

Wit. No. 8, Denonath Ghose, vessels were more or less in a  
 " " 9, Madhub Ghose, diseased condition so that a  
 " " 16, Geereeschunder comparatively slight blow would  
 Bose, Darogah. have been fatal, whereas, if the  
 organs had been sound, it would have required a very severe  
 blow to cause death.

The Jury's verdict is guilty of *kutl-shobeh-amud*; concurring in the above verdicts, I sentence the prisoner to a consolidated penalty of ten years' imprisonment with labor in irons.

*Resolution of the Nizamut Adawlut.*—(Present: Messrs. C. B. Trevor and D. I. Money.) No. 744, dated the 20th October, 1857.

The Court observe that the prisoner Bungshee Ghose Etakatta, who is now appealing to this Court, has been found guilty of the culpable homicide of Kisto Ghose on the 20th December, 1856, and of having committed perjury on the 26th December, 1856, in falsely accusing the deceased of having committed a burglary with a view of screening himself from the charge of the murder of Kisto Ghose, and of falsely asserting that the deceased met his death-blow from a comrade who had accompanied him to commit the same, and of the culpable homicide of his wife Janokee Ghosanee on the 17th January, 1857, and for these three crimes the Sessions Judge has passed upon the prisoner a consolidated sentence of ten years' imprisonment with labor in irons.

The Sessions Judge has not clearly stated under what law the consolidated sentence has been passed; it is to be presumed, however, that it has been passed under Regulation XV. of 1814; the words of Section 2 of this law are as follows. "Whenever a prisoner may be brought to trial before a Sessions Court for two or more distinct offences included in separate commitments and may be convicted at the same Sessions of two or more offences, the prescribed penalties of which, under the Regulations in force, may exceed in the aggregate thirty-nine stripes with the *corah* and imprisonment for fourteen years, but may not, for the crime established against the prisoner on any one commitment, amount to death or imprisonment for life (in which case the trial would be referrible to the Nizamut Adawlut) the Sessions Judge is authorized to *reduce the prescribed punishment for the whole of the offences* of which the prisoner may be so convicted at the same Sessions, so as not to exceed in the aggregate thirty-nine stripes with the *corah* and imprisonment in banishment from the district for a term of fourteen years, provided he shall be of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. If the Sessions Judge, however, should be of opinion that the prisoner is deserving of imprisonment for a longer

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Case of  
 BUNGSHÉE  
 GHOSÉ ETAKATTA.

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BUNGSHEE  
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KATTA.

period than fourteen years, he shall pass sentence in the several cases for the punishment prescribed by the Regulations, and shall transmit the proceedings on each case with a report of the circumstances and his sentiments on the punishment which should be inflicted on the prisoner, for the final sentence or order of the Court of Nizamut Adawlut."

By Section 2, Regulation II. of 1834, corporal punishment was abolished, and in lieu thereof Courts of Sessions were empowered to direct an additional period of imprisonment extending to two years; under Section 2, Regulation XV. of 1814, then the maximum punishment which a Sessions Judge could adjudge was sixteen years' imprisonment with labor in irons.

The cases before us comprise two of culpable homicide and one of perjury: the maximum punishment which a Sessions Judge can himself inflict in the former class of cases is seven years imprisonment with labor in irons. The third case is one of perjury, and the maximum punishment to which a party found guilty of that crime is by law liable, is imprisonment for nine years with labor in irons.

The prisoner therefore in these cases was under the law liable to twenty-three years' imprisonment with labor in irons, but it was in the power of the Judge, *if he thought sixteen years' imprisonment with labor in irons sufficient*, to have reduced the prescribed punishment for the whole of the offences of which the prisoner has been convicted *to that period*, and to have passed a consolidated sentence on him *for that term*; the Sessions Judge has not done that, but has sentenced him *only to ten years'* imprisonment with labor in irons.

Under the view adopted by the Sessions Judge as to the punishment adequate to the offences committed by the prisoner, it seems clear that the Section of the law above cited (Section 2, of Regulation XV. of 1814,) does not apply to the case before the Court, and the Sessions Judge should have awarded to each crime the separate sentence which each seemed to him to require.

The Court therefore remit the records to the Sessions Judge with instructions that he will, in a separate final order, apportion to each crime of which the prisoner has been found guilty, the term of imprisonment which, in his opinion, it merits. The prisoner will be entitled to appeal from the sentences passed against him, after they have been recorded in proper legal form.

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PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

No. 92, of 1857.

RAMGOBIND CHUCKERBUTTY AND ANOTHER,  
PETITIONERS.

VAKHEEL OF PETITIONERS, MR. R. T. ALLAN.

Mymensingh.

CRIME CHARGED.—Assault, which caused the death of Ramsoonder Surma.

1857.

*Abstract grounds of Appeal.*—1st. There are numerous precedents of this Court to shew that mookhtears cannot be dismissed from their service by order of the Court.

October 26.

2nd. The petition presented by the prosecutors cannot be presumed to have been presented at our instigation after a length of eight months posterior to the death of Ramsoonder.

Case of  
RAMGOBIND  
CHUCKER-  
BUTTY and  
another.

3rd. No proof whatever was adduced by the prosecutors in substantiation of their statement, beyond a mere petition. Hence the order passed by the lower Courts dismissing us upon such a petition, is illegal and contrary to the practice of the Courts.

Remarks on  
precedent and  
law and Cir-  
cular Order  
relative to dis-  
missal of  
mookhtears.

4th. The statement of the prosecutors is conflicting; to dismiss us therefore upon the basis of such statement is unjust.

JUDGMENT.

Mr. Allan contends that the Magistrate had exceeded his powers in ordering the dismissal of a mookhtear; that he could only decline to hear him plead before him, and consequently his order being illegal, and the illegality patent on the face of the record, the Magistrate's and Sessions Judge's orders must be quashed.

*Opinion of the Nizamut Adawlut.*—I consider that the appeal is inadmissible under the precedent of 28th February, 1857, page 610, and that there is no illegality; but that the order, taken either as one of dismissal, or one of declining to hear the mookhtear, is essentially the same. The order is "*ei adaulute Mookhtari hoite kharij kori.*" As the law, Section 3, Act XXXVIII. of 1850, and the Circular Order of the 20th February, 1857, No. 3, give the Magistrate the power to pass the orders he has done in reference to his own Court, I see no illegality, and will not interfere.

PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge.*

No. 99, of 1857.

GOLUCKCHUNDER HOLDAR, PETITIONER,

*versus*

MODOOSOODUN BANERJEA, OPPOSITE PARTY.

VAKEELS OF PETITIONER, MR. L. CLARKE AND BABOO  
RAMAPERSHAD ROY.24-Pergun-  
nahs.

VAKEEL OF THE OPPOSITE PARTY, MR. R. T. ALLAN.

1857.

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Case of  
GOLUCK-  
CHUNDER  
HOLDAR.

*Abstract grounds of Appeal.*—1st. Of the disputed land, 29 Beegahs and 10 Cottahs of land were in my possession for more than seven years on the strength of an order passed in an Act IV. case. Hence no suit under Act IV. of 1840 can again be preferred regarding the said land under the provisions of Section 4, of that Act.

2nd. The decision of the Sessions Judge is illegal, inasmuch as he has decided the case merely on the strength of the *kyfeut* judge is acting given by the Ameen, without looking into the proofs filed by the on what is not both parties. Moreover, no oath was administered to the Ameen legal evidence at the time of his appointment and submitting his report, as required by Section 17, Regulation IV. of 1793. Hence the in a case under Act IV. of 1840 *kyfeut* of such an officer is not to be relied on. the Nizamut Adawlut cannot interfere for by law, hence his decision is not valid. under Section 2, Act XXXI. 4th. The Sessions Judge has decided the case immediately of 1841, and after the arrival of the papers, &c. from the Magistrate's Court, the precedent and that too in our absence, otherwise we could have appointed of Dalrymple's vakeels to represent us.

case,

## JUDGMENT.

A case under Act IV. of 1840, was decided by the Principal Sudder Ameen, and came up in appeal before the Sessions Judge. The Sessions Judge held that the evidence on the record did not touch the point to be established, viz. *possession*. He remanded the case to the Magistrate, with an instruction that an Ameen should be deputed to make a local enquiry on the matter of possession. The Ameen did make such enquiry, and gave in his report. The Sessions Judge relied on the report, and decided against the petitioner. The Ameen was *not* sworn to the faithful discharge of his duties before he went out, or to the truth of the report he made, or to any circumstances whatever connected with the case. This state of facts is admitted by both parties.

Mr. Clarke, cites Regulation IV. of 1793, Section 17 and Regulation XIX. of 1814, and the case of Siromonee, Sudder Dewany Adawlut Decision 7th May, 1851, page 309, to shew firstly that an Ameen must be sworn; and next he urges that the Sessions Judge having relied on the Ameen's report only, which stands on the record unsupported in any way by an oath, and consequently is not legal evidence, has acted without evidence; and having acted without evidence, has acted without jurisdiction.

Mr. Allan, on the other side relies on Section 2, Act XXXI. of 1841, and Dalrymple's case Nizamut Adawlut Report 1851, September 6th, 1851, page 1461, last paragraph but one, to preclude any appeal on the subject to this Court.

I consider that in this case the Sessions Judge did not act without jurisdiction in such a sense as to admit an appeal here against the law and precedent cited by Mr. Allan. There is no doubt in the first place that the case is an Act IV. case in which both the Foujdary authorities and the Sessions Judge had *prima facie* direct jurisdiction over the subject-matter of the suit, under the law. The Sessions Judge may have, and I think has, acted in an "irregular" and "unwarranted" manner (to use the terms of the conclusion of the opinion of the Judges in Dalrymple's case) in treating the Ameen's report, without his being sworn to its truth, as legal evidence, but that fact does not constitute absence of jurisdiction, nor give to this Court authority under the law and precedent cited, to interfere in a Summary special appeal, in a *judicial proceeding other than a Criminal trial*. An Act IV. case is a judicial proceeding other than a Criminal trial. Moreover the law expressly provides the remedy of a civil action to reverse any decision of a magisterial authority or of the Sessions Judge in appeal, in cases under Act IV. of 1840.

I do not think it will be legal for this Court to interfere, and I reject the appeal.

PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge*.

SUMMARY SPECIAL APPEALS.

No. 100, DIGUMBER MITTER, PETITIONER.

" 101, RAMCOOMAR DOSS, "

" 102, BRIJESSUREE, "

The pleader, Baboo Ramapershad Roy, having read the preceding judgment, states that he has nothing further to urge in regard to these cases.

I reject these appeals.

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Case of  
GOLUCK-  
CHUNDER  
HOLDAR.

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nahs.

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Case of  
DIGUMBER  
MITTER and  
two others.



PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*GOLUCK KISHEN ACHARGE.—(No. APPELLANT.)  
MR. ALLAN FOR APPELLANT.Mymensingh. BABOO RAMAPERSHAD ROY AND BABOO SUMBHOO-  
NATH PUNDIT FOR GOVERNMENT.

1857.

October 29. Appeal from the orders of the Magistrate of Mymensingh recommending the forfeiture of appellant's estates under Regulation XI. 1796, in consequence of his neglecting to attend the Magistrate's Court when summoned to answer to a charge of resistance of process.

Case of  
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KISHEN  
ACHARGE.

Remarks on  
forfeiture of  
estates under  
Regulation  
XI. of 1796,  
and on the  
processes pre-  
liminary to  
recommenda-  
tion of for-  
feiture, pay-  
ment of fine  
does not bar  
it, no second  
summons ne-  
cessary.

*Mr. G. Loch.*—In this appeal three points have to be considered; 1st, whether payment of a fine imposed on a witness duly summoned and not attending absolves such witness from the duty of giving evidence; 2nd, whether attendance of a witness duly summoned and fined for non-attendance, and who has paid the fine, can be enforced, and how; 3rd, whether the warrant of the 30th April for the arrest of the appellant was legal or not, and if illegal, whether the Magistrate's proceedings recommending the forfeiture of the appellant's property should not be quashed. The first two questions may be considered together. It is urged by the Counsel for the appellant that the action of the first summons to give evidence was exhausted on payment of the fine imposed on the witness for non-attendance; that if the attendance of the witness were still necessary, a second summons requiring his presence should have been issued, and that the warrant issued for his apprehension on 30th April, 1857, after payment of the fine, without the issue of a second summons for his attendance as a witness, was illegal.

The law which originally prescribes rules for enforcing the attendance of witnesses is Regulation IV. 1793, Section 6. This law related only to witnesses in *civil* suits. Its provisions were subsequently extended to witnesses in *criminal* cases by Section 2, Regulation L. 1803.

Section 6, Regulation IV. 1793, lays down rules for the punishment of two classes of recusant witnesses; 1stly for those who having been summoned to attend on a particular date wilfully neglect to do so; 2nd, those who being in attendance refuse to give their evidence. Both classes were liable to fine and imprisonment till they give their evidence. Clause 2, Section 2, Regulation L. 1803 modified this rule so far as regards the second class, as to prescribe that witnesses attending in pursu-

ance of a summons and refusing to give evidence, should in the first instance be committed to prison, and should only be subject to fine for continued contumacy; but as regards witnesses of the first class it left the former law unaltered.

The words used in Section 6, Regulation IV. 1793, relating to recusant witnesses are these. "If a witness so summoned shall not attend on the day appointed, or attending, shall refuse to give evidence or to subscribe his deposition, as hereafter required, the Judge in the first case, if it shall be proved to his satisfaction on oath that the witness was material to the case, is to issue an order to the Nazir to seize and bring the witness before the Court, and is to impose on such witness not having attended, or refusing to give evidence, a fine not exceeding Rs. 500, and to commit him to close custody until he shall consent to give his evidence and sign his deposition." The words shew, I think, very clearly that both classes of witnesses were subject to cumulative punishment, viz. fine and imprisonment till they gave their evidence. The use of the conjunction "and" proves that the imposition and payment of a fine did not exonerate either class of witnesses from the duty of giving evidence, but that, in addition to the fine, witnesses were liable to imprisonment till such evidence was given. As observed above, this rule has been modified in the case of witnesses of the second class, viz. those who attend but refuse to give evidence, but it is still in force as regards those of the first class, who contumaciously refuse to attend after having been duly summoned.

It may be remarked here that the law contemplated the apprehension of the individual previous to the imposition of the fine, but it was found impossible in all cases to arrest the party who easily evaded the warrant; and the law became a dead letter. To obviate this difficulty the Nizamut Adawlut in their Construction No. 172, laid down certain rules to enforce the attendance of absent witnesses who had been duly summoned, preliminary to the imposition of the fine, such fine to be levied, in the event of their continual absence, by the attachment and sale of their property. The payment of this fine by an absent witness, or its liquidation by sale of the absentee's property would therefore no more exonerate him from giving evidence than if he had been brought before the Court, and then fined. The law prescribes a fine for this recusancy in not attending the Court, and further insists on his giving evidence if necessary; and though he have paid the fine, no fresh process calling upon the witness to give such evidence, is requisite, under the provisions of Section 6, Regulation IV. 1793, the action of the first summons, under which his attendance was required, appearing to continue, till the witness has satisfied the requisition of the Court by giving evidence. In the case of a witness wilfully keeping out of the way to avoid giving his evidence, the pay-

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ment of the fine ought not to put him in a better position than that of a witness whose attendance has been enforced. The action of the summons once served appears to me to continue in force till the witness shall have obeyed the requisition of the Court, notwithstanding the liquidation of the fine, and the Court has authority to issue a warrant for the apprehension of such witness, without serving him with a further summons, as it has authority to issue a warrant for his committal to prison should he have been seized and brought before the Court and refused to give evidence.

The facts in the present case are these: The appellant Goluckkishore Acharjea was duly served with a summons to give evidence in a case of homicide, and, on his proving recusant, was fined according to law. He paid the fine, but continued to absent himself. The Magistrate, considering his evidence necessary, acted on the summons already duly served, the requisition contained in which had not been complied with; and on the 30th of April, 1857, issued a warrant for his apprehension. In the execution of this warrant the police were resisted, the appellant was summoned to answer to the charge of resistance, and, in consequence of his wilful absence, his landed property, after the expiry of the period mentioned on the proclamation, was attached, as prescribed by Section 26, Regulation XX. 1817, and is now proposed to be escheated by the Magistrate, who has submitted his proceedings for the confirmation of this Court.

From the remarks I have made, it will be seen that I consider the Magistrate was fully authorised to issue a warrant for the apprehension of the appellant, *notwithstanding* that he had *paid the fine* imposed on him; and that it was *unnecessary* for the Magistrate to issue a *second* summons before proceeding against the appellant by warrant to enforce his attendance. If the evidence of a person be necessary for the ends of justice, the payment of a sum of money ought not to exempt him from the duty of giving such evidence, nor bar the Magistrate's power to enforce his attendance for that purpose.

The above remarks dispose of the third question under consideration, but it may be as well to express an opinion on it as brought before the Court. The police were acting under a warrant issued by the Magistrate, and so far as they were concerned, were in the legal performance of their duty. However the appellant might question the Magistrate's authority to issue such a warrant, it was his duty to obey it; and resistance to the police officers entrusted with its execution rendered him liable to the penalties prescribed by Regulation XI. 1796. The illegality of an order passed by a Magistrate does not authorise resistance to his officers in the execution of it, *vi et armis* by any person, causing thereby a breach of the peace.

If the party be injured by such act he must seek legal means of redress and cannot be allowed to take the law into his own hands. In the present case, however, I think the Magistrate was fully justified in proceeding against the appellant as he did, and consequently the appellant has rendered himself liable to all the penalties for resistance.

It is urged by the Counsel for the appellant that the Magistrate has not conformed to the rules prescribed by law in cases of resistance; that Section 22, Regulation IV. 1793 prescribes that if a Zemindar, &c. resist any order of a zillah Court, the Court is to cause the offender to be summoned to answer the charge; that the Magistrate, instead of doing this, issued a warrant for the appellant's arrest, which is not a legal course of proceeding.

The law quoted by Counsel applies to parties resisting the orders of the *Civil* Courts, but special rules, in cases of resistance to the warrant or orders of the Criminal Court, were prescribed by Regulation XI. 1796; and by Clause 1, Section 2, of that Regulation, the first step to be taken by a Magistrate in cases of resistance, duly deposed to on oath, is to cause the offender to be apprehended and brought before him. It is true that Construction 1216 prescribes that a person summoned to answer to a charge of resistance of process is at liberty to do so through a vakeel, without being obliged to appear in person, but this Construction, though it may sometimes have been misapplied to criminal cases, clearly relates to resistance to *civil* process only; otherwise its purport would be opposed to the distinct declaration of the law laid down in Clause 1, Section 2, Reg. XI. 1796.

As, however, the resistance in the present case is not of a very aggravated nature, I do not think it advisable to inflict the extreme penalty prescribed by the law. At the same time I think a severe punishment is necessary to teach the appellant obedience to the law, and to deter others from similar acts of contumacy. As the appellant is a wealthy Zemindar, and the law only permits a fine to be imposed in lieu of forfeiture, I would sentence him to pay a fine of Rs. 5000. (Five thousand.) Such fine, however, being imposed merely as a punishment for his contumacy in not attending the Magistrate's Court to answer to the charge of resistance, will not exempt him from giving evidence, if still required to do so in the case in which he was originally summoned as a witness, nor interfere with the Magistrate's power to proceed against him by warrant or otherwise to enforce his attendance.

*Mr. H. V. Bayley.*—The facts of the case are stated in paras. 2 and 3, of the Magistrate's letter of the 17th August, as follows: Para. (2.) "In connection with a case of murder, a subpcena was personally served upon Goluck Kishore Acharge

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"a warrant was issued for his arrest on the 31st of December. A proclamation was issued on the 12th idem requiring his attendance within fifteen days; a fine of (500) Rs. was inflicted on the 9th March, and was paid on the 27th idem. On the 30th of April, orders were given for the arrest of Goluck Baboo and others, for not attending as witnesses after due service of the subpoena. In accordance with these orders the Darogah in the first place deputed the jemadar to execute them. The jemadar was resisted on the 12th May, and deposed to that effect before the Darogah, who then proceeded to the spot to investigate the case. During that officer's endeavours to arrest Goluck Baboo, both in accordance with my orders of the 30th of April, and as a defendant for having resisted the jemadar, the second resistance to and assault upon the police took place on the 13th of May. On a petition of appeal being presented to the Sessions Judge, the arrest of Goluck was prohibited, pending the inspection of the papers of the case. This order of the Sessions Judge, dated the 13th of May, reached me on the 14th idem. On the same day I passed the order staying the execution of the process. (Para. 3.) Such are the facts preceding the resistance. Subsequently, the evidence to prove the fact was taken, and on the 19th of May, an order was issued for the arrest of the defendant Goluck Kishore. The proclamation for his attendance was issued on the 24th of May, and the issue proved by the evidence of witnesses. The defendant failed to attend within the month specified in the proclamation, and on the 29th of June, confiscation of property was adjudged against him."

The record bears out the above statement of the facts, and the Counsel take no exception to it, with reference to the point now in appeal before us, viz. the *legality* of the proceedings of the Magistrate.

It is contended that Section 6, Regulation IV. of 1793, prescribes the process requisite with a view to secure the attendance and the evidence of a witness, and prescribes the penalty of a fine of 500 Rs. for non-attendance; that the provisions of the above law for the Civil Courts are those which, expressly by Section 2, Regulation L. of 1803, are to be followed by the Criminal Courts; that the process being disregarded and the fine paid, the process is exhausted, the penalty complete, and the case closed; further, that no other proceeding or penalty can supervene without a fresh summons; that consequently the warrant of arrest of the 30th April, was illegal; and the ulterior proceedings of the police, and the act of the Magistrate adjudging the estate of petitioner forfeited, were also illegal, and must be quashed.

We thought the question one of so general and important a character that it should be decided by a full bench, but the

majority of the permanent judges have held that we should decide it. I proceed accordingly to give my opinion upon it.

Mr. Allan urges that as the case depends upon the construction of a penal law, such construction must be restricted to the exact terms of the law. But, in the first place, Section 6, Regulation IV. of 1793, on which Mr. Allan relies, is a law for the guidance of the *Civil Courts*, and not for that of the Magistrate; and what we have to consider, even with reference to his own argument in this matter, is the law in Clauses 1 and 2, Section 2, Regulation L. of 1803, Section 26, Regulation XX. of 1817, and Regulation XI. of 1796. In the next place, it may perhaps fairly be stated that those laws which provide for the processes necessary for the conduct of the business of the Courts of Justice are not strictly *penal laws* in the sense in which those words are legally used; for, a *penal law* is more properly that which defines what is a crime or misdemeanor, and punishable as such; and not what specially arranges a system of procedure and provides for its being duly carried out. Further, although the terms of a penal law are to be construed strictly, still when those terms are doubtful, the guide to their proper construction should be sought in the intent of the law.

The intent of Regulation L. of 1803, as set forth in the title and preamble is "for procuring the attendance and evidence of witnesses" in the *Criminal* as well as Civil Courts. The first two clauses of Section 2, provide for a summons to attend the Court, for a fine not exceeding five hundred Rupees if the party summoned wilfully neglects to attend, or attending, refuses to give evidence, *and*, in the latter case, over and above the fine, commitment to close custody until the recusant party shall consent to give his evidence, and sign his deposition.

Thus, both the intent and terms of this law do *not* warrant the view that the process is exhausted when the fine is paid.

But the law on the subject is not limited to Regulation L. of 1803. Regulation XI. of 1796, is a "Regulation for providing against resistance to the processes of the zillah and city Courts and police officers." Clause 1, Section 2, provides that if any person resist *any warrant, order, or other process of any Magistrate or Police Officer*, the offender shall be apprehended; if he abscond or conceal himself so that he cannot be apprehended, proclamation for his appearance, within a period of one month, shall be made; if the offender, do not appear within the period of one month, or on appearance be found guilty of resistance of process, the estate shall be declared forfeited, and be attached, and be so held till the receipt of final orders from this Court. (Section 26, Regulation XX. of 1817.)

The intent and terms of the above law clearly shew that Clauses 1 and 2, Section 2, Regulation L. of 1803, are not the only or final laws for resistance of process; or in other words, the

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payment of a fine under Regulation IV. of 1793, as extended by Regulation L. of 1803 does not exhaust the process or the penalty, nor is it contemplated by the law that *any person may redeem or compound for 500 Rs., the legal obligation to obey a process and give evidence*, which is in reality the contention of Mr. Allan, and which is obviously against the policy of the law.

There remains the question whether the fine having been paid, a *second* summons is indispensable to legalise the application of the law, XI. of 1796.

That law distinctly provides *further* penalties than the fine of 500 Rs., and these not for the resistance of a process or order *there* specified, but for the resistance of *any process or order* of the Magistrate. It provides further penalties, but *not* further summons; the original process runs, and is continuous. The one penalty of fine for disregard of the summons having failed, further measures and further penalties are provided. The proclamation, preliminary to the infliction of those penalties, does not affect the original summons, but only has regard to the further penalty. That proclamation has in this case been duly issued, the time has expired and the further penalty of forfeiture thus becomes legal, without any second summons being requisite to make it so.

In regard to the mitigation of the punishment, we have on the one hand an irremediable and ruinous punishment to a wealthy zemindar; we have on the other, a resistance, *first* of the Jemadar and *then* of the Darogah; which quite brings the case within the terms of the law. I will not, however dissent from the opinion of my colleague in this particular case, especially as he has guarded it with certain reservations which will provide for the requirements of the law being fulfilled; but no repetition of such infractions of the law should be permitted without the full penalty being exacted.

Mr. Allan is permitted, with consent of my colleague, to reserve the point of the inability of the petitioner to meet such a fine, or of its being ruinously severe.

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REGULAR CASES.

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REGULAR CASES.

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PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge*.

GOVERNMENT

*versus*

NOKOWREE BAGDI *alias* CHOTA NOKAREY BAGDI.

Hooghly.

CRIME CHARGED.—1st count, dacoity on the night of the 20th January, 1847, in the house of Kishwar Dey Tellee of Dadpore, thanna Selemabad, zillah Burdwan; 2nd count, having belonged to a gang of dacoits.

1857.

November 3.

Committing Officer.—Baboo Chunder Sekur Roy, Deputy Magistrate under the dacoity Commissioner of Hooghly.

Case of  
NOKOWREE  
BAGDI *alias*  
CHOTA NOKA-  
REY BAGDI.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Hooghly, on the 16th September, 1857.

*Remarks by the Officiating Additional Sessions Judge.*—First

Prisoner ac-  
quitted; the  
evidence, espe-  
cially as to his  
identity, being  
defective.

\* Wit. No. 1, Dookheeram Haree,  
" " 2, Tara Haree.

count, two approvers\* crim-  
inate the prisoner in this da-  
coity. Their evidence is clear

and credible, and agrees in essential parts with the facts elicited at the time of the occurrence; but witness No. 2, at the Sessions is not so full and accurate in regard to some of the particulars as he was in his original confession. The evidence of the approvers is satisfactorily corroborated by the original pro-  
ceedings† of the case. It appears from the report‡ of a thaunnah jemadar that he, with some burkundazes and other police officers, having heard of the dacoity, fol-  
lowed and attacked the dacoits, wounded two of them and having seized one of the wounded men, he called out to the prisoner by name to come and rescue him. The two wounded men were residents of prisoner's vil-  
lage.§

† *Nuthee*, No. 29.

‡ Page 9.

§ Page 13.

The prisoner stated in his defence before the committing officer, that he is not the Nokowree Bagdi alluded to by the approvers; but that plea, having been clearly shown to be false by the Committing Officer, has not been repeated at the Sessions. He stated further both before the Committing Officer and at the Sessions that he has been falsely accused by the approvers, because they and other bad characters used to frequent the house of his (prisoner's) brother-in-law and that he (prisoner)

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used to remonstrate with them ; but he has adduced no proof of this allegation. Prisoner also stated at the Sessions that he was in jail at the time witness No. 2, deposed that he had committed the dacoity. The meaning of this statement is, that witness No. 2 affirmed at the Sessions that he did not remember the date of the dacoity, and when pressed to give some approximation, replied in a vague manner that it occurred two or three years ago. The witnesses examined in regard to the character of the prisoner do not say anything in his favor.

Witness No. 1, confessed to this dacoity in October last, and witness No. 2 in March. The prisoner was apprehended in June. The Committing Officer certifies that every precaution was adopted with a view to prevent collusion. When witness No. 1, confessed, he was the only member of the gang who had been apprehended ; and when witness No. 2 confessed, he was confined in a separate cell under a special guard. The record of the case was received after the confession of witness No. 1.

I convict the prisoner, who is a notorious bad character, of having belonged to a gang of dacoits and recommend that he be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present : Mr. H. V. Bayley.) Two approvers testify that this prisoner committed the dacoity charged in the first count. The confessions of these two were taken before the apprehension of prisoner. But the confession of witness No. 2, merely mentions, "one Nokowree," and in no way *then* fixes the *identity* of this prisoner as that one ; though the witness No. 2, states before the Committing Officer *after* prisoner's apprehension that this prisoner is the party referred to. Before the Sessions this approver witness, till reminded, omits mention of the fact that the Nokowree he referred to was apprehended and forwarded to Burdwan, which he mentioned in his first confession. He also deposes to this dacoity as occurring two or three years ago, but it was in 1847. The corroboration is said to consist in what the Sessions Judge calls a *report* of the Jemadar at the time. That is, however, an information without oath. ("Being questioned states" are the words.) That paper merely mentions that a wounded prisoner called out to "*Nokowree*" to release him. But in no way does it fix the identity of that person as *this* Nokowree, while the evidence clearly shews there were *two* Nokowrees in that dacoity. The Jemadar is not called, nor is any reason given for his not being so. I do not think this (and there is no more, and no other dacoity charged,) sufficient legal evidence to convict the prisoner. I therefore acquit him, and direct his release.

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PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge.*

KUNEERAM MUNDLE AND GOVERNMENT

*versus*

HURROO SINGH (No. 1,) BONOMALLY MIDDHAH  
(No. 2,) AND SHADOO DOSS BUSTUM (No. 4.)

24-Pergun-  
nahs.

1857.

CRIME CHARGED.—1st count, dacoity in the house of Kuneer-  
ram Mundle (the prosecutor) attended with the wounding of  
his son Buddinath and the plunder of property valued at  
Co.'s Rs. 31-2; 2nd count, illegal assemblage and attacking the  
house of Kuneeram Mundle (the prosecutor) attended with the  
wounding of his son Buddinath and the plunder of property  
valued at Co.'s Rs. 31-2.

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HURROO  
SINGH and  
others.

CRIME ESTABLISHED.—Illegal assemblage, and attacking the  
house of the prosecutor, attended with wounding, and plunder  
of property.

Committing Officer.—Honorable A. Eden, Officiating Joint-  
Magistrate of Baraset.

Tried before Mr. E. Lautour, Sessions Judge of 24-Pergun-  
nahs, on the 28th July, 1857.

*Remarks by the Sessions Judge.*—The prosecutor and his  
son, Buddinath Mundle, live at Achuldaha, the defendants at  
Chetonabad about six miles distant.

Appeal of pri-  
soners reject-  
ed. Remarks  
on Clause 1,  
Section 3, Re-  
gulation LIII.  
of 1803, and  
Circular Or-  
der No. 80,  
9th of March,  
1852.

At midnight on the 5th May, the house of the prosecutor  
was forcibly entered by the four prisoners being part of a gang,  
said to amount to ten or twelve men, all armed with *latties*.  
The four former were said to have been recognised (Darogah's  
Report, 7th May.) The prosecutor was tied up, his son severely  
beaten by a *lattice* by which his head was cut open without frac-  
ture of the skull, however, (Doctor's report) and property, as  
per a schedule, said to have been carried off. At the time the  
prosecutor and his son knew the persons and addressed them by  
name.

The Darogah searched the house of the prisoners and three  
others not committed. The prosecutor claimed one brass dish  
and *saree*, or piece of cloth, found on the person of prisoner  
No. 1, which that prisoner also claimed and a dish of the same  
description found in the house of the prisoner No. 2, which was  
also similarly claimed by that individual.

The prosecutor's son at his own wish desired to be left at  
home, but on the 20th May, the wound being still unclosed and  
the Darogah being apprehensive of serious consequences, he was  
forwarded to the hospital for medical treatment.

The property carried off is said to amount in value to 31 or

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others.

32 Rupees. The police Darogahs who have been employed in the case, ignore the fact of dacoity, admit the occurrence, but attribute it to revenge in consequence of the plaintiff having removed the wife of the prisoner No. 1, but this statement is wholly without foundation or proof and is rejected by the prisoner No. 1.

The prisoners in their defence state that they are made the victims of a quarrel between the grantee zemindars. The prosecutor's zemindar being Mr. Fraser, into whose clearance, he had recently removed, from that of the zemindars of the defendants (Ramguttee Nag.)

I annex the Magistrate's remarks in making this commitment.

On the occurrence, the prosecutor's neighbours, witnesses Nos. 11 and 12, went to his house, a thatched house with a reed enclosure on three sides, they saw a body of men retreating whom they did not recognize, but found the prosecutor tied and his son wounded. There is no attempt at forced evidence, and recognizing the retreating parties, and therefore the case rests entirely upon the evidence of the prosecutor and his son, and upon that for the property found on the prisoners Nos. 1 and 2.

Evidence is brought on both sides to prove that this respectively belongs to the prisoners and to the prosecutor. Unfortunately it is of a description which is scarcely recognizable and I give the prisoners any benefit from a doubt as to this point.

It appears to me, that as stated by the defendants, this case did originate in a grudge felt by their zemindar against the prosecutor, for withdrawing recently from his clearance (*abad*) and going over to another clearance, and that outrage was probably perpetrated under the authority of the zemindar Ramguttee Nag, and that the police have throughout been reporting in collusion with that individual so as to withdraw the attention of the authorities from the real instigators of this outrage.

An armed band goes out at night, forcibly enters the house of the prosecutor, ties him up, violently assaults the prosecutor's son, wounds him so severely that fifteen days subsequently the wound is still unclosed and guts the house of every thing in the way of property within it. The mere fact of not recovering that property will not take such a case out of the category of dacoity. The mere absence of torches, accounted for by a moonlight night, is scarcely enough to alter the nature of this very serious offence. I convict the prisoners Nos. 1, 2 and 4, on the evidence of the father and the son, on the prosecution of the Government. I sentence the two Nos. 1 and 4, to seven years' imprisonment in the usual manner and prisoner No. 2, to five years' similar imprisonment.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) Baboo Mehrhund Chowdry for the prisoners urges

that the only evidence of witnesses to the fact is that of No. 1, an interested party, the son of the prosecutor; that the Magistrate and Sessions Judge do not consider the identification of the property as prosecutor's satisfactorily proved, and that the feuds of rival grantees had led to the false charge being adduced against his client.

The prisoners who appeal were mentioned at the Police at the earliest possible date, by the prosecutor and his wounded son, to have been recognized by them, as present, and actively concerned in the offence charged. The same names were, immediately after the occurrence, mentioned by the prosecutor and his son to the neighbours; and that fact is sufficiently proved by the evidence of those neighbours. And further, neither the evidence of the prosecutor, nor of his son, nor of the neighbours differs materially in any stage, nor bears the appearance of falsehood. The wounded state of prosecutor's son is duly proved. It is not surprising that in a night attack, where the father and the son were on the premises, they should be the witnesses likely to recognise the parties concerned.

The objection as to the difficulty of identifying such household property as was found in this case is one of general application; but while it affords the prisoners the benefit of a doubt, it does not destroy the character of the evidence for the prosecution on this point.

The plea of an intrigue between prosecutor and Hurroo Singh's wife is in no way proved; and, assuming that the attack originated in a feud of rival grantees, it does not follow that therefore the charge is false, or that it was impossible, or highly improbable that the prisoners should have been concerned in it.

As to the conviction, were the *going forth with criminal intent* of robbery by open violence clear, the circumstances of the house being that of a poor ryot, and the property found with prisoners not being clearly identified as prosecutor's, and there being no torches, would not of themselves bar the conviction on the first count, under Cl. 1, Sec. 3, Reg. LIII. of 1803. In some respects the *intent* may be presumed by the acts, and in this case the taking of the goods by open violence was proved as one of those acts. Looking however to *all* the circumstances of the case, I am of opinion that there is an "*absence of proof of the criminal intent of committing robbery at the time of going forth.*" (V. C. O. No. 80, 9th March, 1852, para. 1.) But I would not therefore interfere with the conviction on the 2d count.

At the same time, I think, that as the Joint-Magistrate states that "this is one of those cases which are now becoming very common," there is no reason to interfere with the sentence. I reject the appeal.

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## PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

## GOVERNMENT

*versus*

Midnapore.

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NURSING  
PAUREEA  
and others.Prisoners  
convicted ;  
pleas of Coun-  
sel in appeal  
being over-  
ruled. Re-  
marks on in-  
accuracies in  
the report and  
incomplete-  
ness of record.

NURSING PAUREEA (No. 4,) MUGNEE SING (No. 5,) MANOO PAL (No. 6,) AND URJOON DOSS (No. 7.)

CRIME CHARGED.—1st count, Nos. 4, 5 and 6, dacoity on 7th April, 1842, in the house of Haroo Nund, inhabitant of Mungrajpore, thannah Puttaspoore ; 2nd count, Nos. 4, 5 and 6, dacoity on 21st August, 1844, in the house of Ramkisto Tirpaty, inhabitant of Dunt, thannah Nagaon ; 3rd count, Nos. 4, 5 and 6, and 1st count, of prisoner No. 7, dacoity on 27th December, 1845, in the house of Chandkooar Kusbee, inhabitant of Rookoonpore, thannah Nagaon ; 2nd count, of prisoner No. 7, dacoity, on 4th June, 1851, in the house of Kaleechurn Mahitee, inhabitant of Khajoordah, thannah Nagaon ; 4th count, of prisoners Nos. 4, 5 and 6, and 3rd count of prisoner No. 7, with being by profession dacoits and having belonged to a gang of dacoits.

Committing Officer.—Captain C. H. Keighly, assistant dacoity Commissioner at Midnapore.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Midnapore, on the 25th August, 1857.

*Remarks by the Officiating Additional Sessions Judge.*—First

\* Wit. No. 1, Bhcem Mytee, count Two approvers\* criminate prisoners Nos. 4, 5 and 6, in this dacoity ; but approver wit-

ness No. 2, did not name prisoner No. 6, in this dacoity in his original confession. The evidence of the approvers is satisfactorily corroborated by the original proceedings of the case. Early in the morning after the dacoity, a burkundaz of thannah Nagaon, having noticed that witness No. 1, and Narrattaun Doss were absent from their homes during the night, apprehended them near the house of the latter with property, which there can be no doubt was acquired by this dacoity. In the course of the day Narrattaun Doss confessed before the Darogah of Nagaon that he the prisoners Nos. 5 and 6, the two approver-witnesses and others had committed a dacoity in the house of Haroo Nund. Hattoo Kooar and Brindabun Doss made similar confessions on the same day ; the former criminating prisoners Nos. 5 and 6, and the two approvers, the latter omitting prisoner No. 6, but naming the other three. The above confessions were repeated before the Magistrate. On the day after the dacoity some property was found in the house of Mussummut Eudee, who con-

fessed before the Darogah that approver-witness No. 2, and Brindabun Doss had deposited it there and who added before the Magistrate the name of prisoner No. 5. The owner of the house denied that a dacoity had been committed, but his denial was manifestly false. He had the mark of a burn on his forehead and bruises on his person. His premises present every indication of the occurrence. The outer and inner doors had been broken open.

Second count. Prisoner No. 7, was acquitted at the Sessions of this dacoity, and is consequently not charged with it now. The two approver-witnesses criminate the other three prisoners; but witness No. 1, did not name prisoner No. 6, in his original confession. Witness No. 2, and a brother of prisoner No. 7, were convicted.

Third count. The testimony of the two approvers, who criminate the four prisoners in this dacoity is corroborated by other evidence and is fully borne out by the original proceedings of the case. Rughoonath Paharee\* deposes that during the dacoity he distinctly recognized prisoners Nos. 4, 5 and 7; and

\* Witness No. 3.

Sagur Doss† deposes that he recognized prisoners Nos. 4 and 5.

† Witness No. 4.

These two witnesses were sleeping in the house and they have throughout adhered to their statements. Rughoonath Paharee at the Sessions named also prisoner No. 6; but as he did not name him before, his evidence against that prisoner is of no value. The owner of the house (deceased) deposed that she recognized prisoner No. 7, and witness No. 1, as they were attacking her, and the other three prisoners, as they were leaving the house. There is no reason whatever to suppose that the prisoners were falsely accused. The owner of the house did not report the dacoity; its occurrence was otherwise ascertained by the Darogah. But when he proceeded to the spot to investigate, the real facts were disclosed.

Fourth count or dacoity in the house of Kaleechurn Mahitee.

‡ Wit. No. 1, Bheem Mytee.

One approver‡ criminate prisoner No. 7, in this dacoity, the owner of the house deposed in the mofussil and before the Magistrate that he had recognized prisoner No. 7.

Prisoner No. 6, and witness No. 1, have been convicted in a case of highway robbery.

*Defence of the prisoners.*—They deny their guilt and affirm that they have been falsely accused by the approvers on account of enmity. No. 4, avers with regard to witness No. 1, that his younger brother gave evidence unfavorable to that witness when an enquiry was made as to his character; that he (prisoner) gave evidence against that witness in a case of highway robbery; that he has taken the homestead of that witness, since he has

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been in jail; that that witness brought a case against him before the Magistrate, which was dismissed; that he assisted to turn that witness out of the village, because he was a bad character; and that he lent that witness some money to regain his caste, after he had committed an infamous offence, and that he had applied for repayment. With regard to witness No. 2, the same prisoner avers that he assisted in turning him out of the village because he was a bad character. Prisoner No. 5, avers that he informed against witness No. 1, when he committed the infamous offence alluded to above; that he assisted to remove that witness from the village; that he gave evidence against that witness in a case of highway robbery; that that witness brought a false charge before the Magistrate against him in the name of his, witness's, son, which was dismissed. The same prisoner avers that he assisted in having witness No. 2 turned out of the village. Prisoner No. 6 avers that witness No. 1, wished him to give evidence in his favor in the numerous cases he has been implicated in, and that he refused to accede; and that witness No. 2 has been induced to give false evidence by the other witness. Prisoner No. 7 avers that he used to remonstrate with witness No. 1, when he came to the village after he had been turned out by the zemindar; and that he refused to give his daughter in marriage to the son of the witness No. 2, after he had taken money for the purpose from that witness. Some of the witnesses to the character of the prisoners depose in their favor and others against them.

The evidence against all the prisoners is clear and convincing. The confessions of the witnesses were taken before the apprehension of prisoners Nos. 4, 6 and 7, and before prisoner No. 5, who was in the Midnapore jail in another case, had been sent to Captain Keighly. The prisoners were placed among several persons and were at once identified by the witnesses. The records are under the especial charge of one of Captain Keighly's most trust-worthy amlah; those in the cases referred to in counts 1 and 2, were not received until after the confessions of the approvers. The prisoners have entirely failed to prove the numerous allegations contained in their defence. Prisoner No. 4 was defended by a Vakeel; and had there been any foundation for those allegations he surely would have been able to adduce some proof.

I convict all the prisoners of having belonged to a gang of dacoits and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) Mr. Norris appears for prisoner No. 4, Nursing Paureea, and urges that there is only one count, the third, in which there is any real corroboration of the testimony of the approver-witnesses; that corroboration, as to incidents of a dacoity, is insufficient, and that clear corroboration by independent

testimony directly connecting the *identical* prisoner with the count charged is necessary to render the testimony of approver-witnesses sufficient for a conviction. He cites Russell on Crimes, pages 962-3, of Vol. 2, Ed. 1843. Mr. Norris, then proceeds to point out that the evidence of witnesses Nos. 3 and 4, Rugoonath Paharee, and Sagur Doss, is highly improbable, inasmuch as they state they stood four or five cubits off the dacoits the whole time of the dacoity, mentioning that they (witnesses) recognized prisoner No. 4 and others, only when the dacoits left, while it is notorious that no Bengalee would have remained so long so close to dacoits, but would have run off. Mr. Norris finally urges that the enmity of witness No. 1, has caused him to depose against prisoner, No. 4; and copy of a petition to the Magistrate, dated 22nd November, 1856, and copy of a deposition of the brother of prisoner No. 4, against witness No. 1, dated 6th May, 1842, are tendered to this Court, though not filed below.

I will first decide the case of prisoner No. 4. The Sessions Judge and Committing Officer shew nothing corroborative of the testimony of the approver-witnesses in regard to counts 2 and 4, as affecting prisoner No. 4. My present remarks will therefore be confined to the 1st and 3rd counts.

On the *first* count, the record shews that the prisoner No. 4, was mentioned by Nouruttum Doss and Hatoo Koar, in their confessions before the police, and in that of Brindabun Doss before the Magistrate. It is of course true that the confessions of accomplices cannot be legal evidence against any other parties than themselves; but it is also true that where the facts of a case, as developed by confessions of accomplice are such as circumstantially to corroborate the legal depositions of witnesses, *as to the connection of identical prisoners with the offence charged*, be they approver-witnesses, or other witnesses, *such* corroboration may properly be taken into consideration. On this principle, I think the record of the dacoity charged in the first count does materially *support* the credibility of the testimony of the approver-witnesses, *not only* in regard to the *incidents* of the dacoity, but also in regard to the *identity* and *connection* of prisoner No. 4, with the offence charged. I have to observe that the Sessions Judge is *incorrect* in his remark on the confession of Brindabun Doss. He says "the latter" (i. e. Brindabun Doss) "omitting prisoner No. 6, but naming the other three." Now Brindabun's confession to the police, (and the context shews it was that to which the Sessions Judge referred,) implicates prisoner No. 5, Mugnee Singh, and no others of the prisoners in this Calendar. Hatoo Koar's confession before the Magistrate has not been submitted, though the Sessions Judge distinctly speaks of it and Brindabun Doss's, as one made to the Magistrate.

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On the *third* count. The Sessions Judge speaks of the testimony of the two approvers who criminate the four prisoners. I have carefully perused the Calendar, the remarks of the Committing Officer, and the deposition of witness, No. 2, Heeroo Mytee, and I cannot find that he is even called as a witness to the dacoity charged in this count. The testimony of witness No. 1, is clear as to all four prisoners. It is fully corroborated by the evidence of witnesses Nos. 3 and 4. That evidence agrees with their statements to the police at the time, i. e. in 1845. (Why their depositions before the Magistrate at that time were not submitted to this Court does not appear, and it might have been under some circumstances, an important omission.) There is no objection made to the testimony of these witnesses, (Nos. 3 and 4,) on the ground of enmity. Further, their testimony agrees with the statement made to the police at the time by Goorooper-saud Doss. It is urged in the defence that witnesses Nos. 3 and 4, were that night at another house, i. e. that of the paramour of the prosecutrix. But no proof whatever is adduced in support of this plea. The improbability that Bengalees would remain in close proximity of dacoits is not sufficient to outweigh the direct and corroborative evidence; and as to probabilities, there is another probability also, i. e. that they might remain safer where they were, than if they exposed themselves by leaving the premises. The plea that the memories of the witnesses could not be correct as to small details after twelve years, stands alone, and is not of much weight.

On the pleas in defence of prisoner No. 4, I have to remark that there is no direct proof of the points of enmity stated, nor are they stated in the same terms before the Committing Officer as they are before the Sessions Judge, either as to the "infamous offence" or as to any enmity against witness No. 2. Admitting to the appellant, as an indulgence, not a right, the reception of the documents now tendered to this Court, the one, the petition of the 22nd November, 1856, is doubtless indicative of enmity as far as relates to prisoner No. 4, having plundered the premises of witness No. 1, and having given evidence against him in a case of highway robbery. The copy of the deposition is of that given by the brother of prisoner, No. 4, and is dated the 6th May, 1843, three and half years before the dacoity. I observe that the Committing Officer speaking of the *four* prisoners writes, "their answers were then taken. They have no cause of enmity against the approvers." This is incorrect as to No. 4. He stated to the Committing Officer that he had given evidence against witness No. 1, in a case of highway robbery.

Giving a careful consideration to the whole case of prisoner No. 4, I can come to no other conclusion than that he has been properly convicted under Act XXIV. of 1843, and rejecting the appeal, I sentence him, under the same Act, to be transported, for life with hard labor.

The prisoners Nos. 5, 6 and 7, state to the Committing Officer that they had no enmity with the approver-witnesses. At the Sessions they say they had. It would be better if the Sessions Judge gave an abstract in his letter of reference of the defence before the Committing Officer.

I have carefully considered the evidence for the prosecution against prisoners Nos. 5, 6 and 7, and deem it sufficient. I convict them under Act XXIV. of 1843, and sentence them, under the same Act, to be transported for life with hard labor.

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and others.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

SONATUN BAGDI (No. 9.) AND THAKOOR DOSS  
CHABLA BAGDI (No. 10.)

Hooghly.

1857.

CRIME CHARGED.—1st count, dacoity on the night of 31st November, 1848, in the house of Daman Sheikh of Tatar Chuck, thannah Dewangunge, zillah Hooghly; 2nd count, dacoity on the night of the 10th May, 1853, in the house of Bishto Rakeep, of Belya Koosmo, thannah Dewangunge, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

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Case of  
SONATUN  
BAGDI and  
another.

Committing Officer.—Baboo Chundur Seekur Roy, Deputy Magistrate under the Dacoity Commissioner at Hooghly.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Hooghly, on the 21st September, 1857.

Prisoners  
convicted. Re-  
marks on con-  
fessions and  
secondary evi-  
dence.

*Remarks by the Officiating Additional Sessions Judge.*—Para. 2. Prisoner No. 9 pleads guilty, and prisoner No. 10 pleads *not guilty*. Before the Committing Officer, prisoner No. 9 confessed in detail to having been engaged in eight dacoities besides those referred to in the first and second counts; and his con-

fession has been duly proved.\*

\* Wit. No. 4, Gopal Misser,  
" " 5, Joynarain Chuc-  
kerbutty.

Para. 3. First count. Two ap-  
provers, witness No. 1, Gobind  
Chung, witness No. 2, Bhodo

Bagdi criminate the prisoners in this dacoity; and their evidence is satisfactorily corroborated by the original proceedings, *nuthee* No. 283. It appears that the dacoity was committed by two gangs, prisoner No. 1, being a member of one and the approvers being members of the other; that prisoner No. 9 planned the dacoity; and that Goburdhun Haree one of the dacoits, was wounded and seized on the spot. Goburdhun Haree confessed, page 9, and named among other accomplices a Bagdi of Ghose-

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† Page 41.

‡ Page 47.

appears that he collected six Bagdies of Ghosepore, and that Modoo at once pointed out prisoner No. 10, as the Bagdi to

§ Page 66.

|| Page 82.

¶ Page 94.

Para. 4. Second count. One approver\* criminales the prisoner

\* Wit. No. 1, Gobind Chung.

† *Nuthee* No. 32, page 8.

‡ List of property, page 11.

§ Wit. No. 3, Nobin Kowrah.

Para. 5. Another approver§ deposes at the Sessions that he was engaged with prisoner No. 10, in two dacoities; and the other approvers denounced the prisoners in several dacoities.

Para. 6. Before the Committing Officer, prisoner No. 10 stated that he was not acquainted with witness No. 1, and that there was no enmity between himself and witness No. 2. At the Sessions he states that he was in the employ of the zemindar of witness No. 2, and that he had a quarrel with that witness about collections; and that he was the chowkeedar of a *hat* to which witness No. 3 brought his wares for sale, and that he had a quarrel with that witness regarding the dues payable to the chowkeedar. One witness having deposed that prisoner No. 10 is a bad character, the remaining witnesses were withdrawn.

Para. 7. The prisoners were arrested after the confessions of the approvers. The records of the cases were not received in the Dacoity Commissioner's Office until after the confession of witness No. 1. The Committing Officer certifies that the prisoners were placed among strangers, and that they were identified by the approvers.

Para. 8. I convict the prisoners of having belonged to a gang of dacoits and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) Prisoner No. 9 confessed to the Deputy Magistrate and at the Sessions. His confession is corroborated to the extent specified in para. 3 of the letter of the Sessions Judge. But in regard to this confession and this corroboration, the attention of the Sessions Judge and the Commissioner requested to two points:

pore, Modoo Haree, also confessed,† and he too named a Bagdi of Ghosepore. From a report‡ of the Darogah, it appears that he collected six Bagdies of Ghosepore, and that Modoo at once pointed out prisoner No. 10, as the Bagdi to whom he alluded. Rammohun confessed§ and named the two prisoners. Khodeeram confessed|| and named prisoner No. 9. Prisoner No. 9, confessed¶ and named prisoner No. 10.

in this dacoity. His evidence, the confession of prisoner No. 9, and the evidence† of the owner of the house taken at the time, agree in regard to essential facts, and in regard to the description of the plundered property.‡

1stly. In the confession before the Deputy Magistrate, the prisoner No. 9 enquires if he will be made an approver in case he confesses. The reply is, that it will be considered (*tahar bebechona hoibek.*) The qualification which follows that "nothing certain can be said" does not remove that irregularity. A prisoner should have nothing he can construe into an inducement held out to him to confess.

2ndly. The report of the Darogah is referred to as corroborative evidence. Until it be shewn that the Darogah is not available to give his testimony in Court in the presence of the prisoner, such a report is not legally evidence.

The Commissioner should make the two points above noticed the subject of instructions to his subordinates; and the Sessions Judge should see that the Court's view upon them is attended to in future cases.

In the case of prisoner, No. 9, I consider his confessions fully corroborated by the depositions of the witnesses Nos. 1 and 2, and that those confessions represent the truth, and are thus sufficient to sustain his conviction.

In regard to prisoner No. 10, the evidence of witnesses Nos. 1 and 2, is corroborated by the facts stated and the parties named in the record, No. 283, and No. 32. This prisoner substantiates no defence.

I convict the prisoners under Act XXIV. of 1843, and sentence them, under the same Act, to be transported for life with hard labor.

PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

GOBERDHON DOOLLY BAGDI (No. 9,) MOHES CHONDAL (No. 10,) AND RAMDHON ALIAS DHONA CHONDAL (No. 11.)

CRIME CHARGED.—1st count, dacoity on the night of the 7th July, 1848, in the house of Nobin Tamlee of Dhaphoor, Potee Raghupoor, thannah Sulleemabad, zillah Burdwan; 2nd count, dacoity with murder on the night of the 25th April, 1852, in the house of Ramcoomar Biswas of Badpoor, thannah Sulleemabad, zillah Burdwan; 3rd count, having belonged to a gang of dacoits.

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Case of  
SONATUN  
BAGDI and  
another.

Hooghly.

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Case of  
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DOOLLY  
BAGDI  
and others.

Prisoners released; the testimony of approver witness.

1857. Committing Officer.—Baboo Chunder Seker Roy, Deputy

Magistrate under the dacoity Commissioner at Hooghly.

November 4. Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Hooghly, on the 14th September, 1857.

Case of GOBERDHON DOOLLY BAGDI and others. *Remarks by the Officiating Additional Sessions Judge.*—

\* Wit. No. 1, Dookheeram Haree,  
" " 2, Teencowree Bagdi.

First count, two approvers\* relate the particulars of this dacoity and criminate the prisoners. The original proceedings† afford some corroboration of the evi-

ses legally requiring corroboration as to the identical connection of the prisoners with the dacoities charged irrespective of corroboration as to incidents only of a dacoity.

† *Nuthee*, No. 198.

dence of the approvers, though the names of the prisoners do not occur therein. The essential facts mentioned by the approvers agree with those elicited during the enquiry. The approvers say that Roopchand Haree took a prominent part; and it appears from the proceedings that he was wounded and seized by the villagers; that he at once confessed,‡ implicating witness

‡ Page 11.

No. 1, as an accomplice, and that he was eventually convicted.

The evidence of the approvers in regard to this dacoity has been tested and received in the case of Modon Doolly and Poontee Doolly, who were also implicated in the confession of Roop-

§ Report not published.

chand, and who were transported for life on the 28th May last.§

Second count. The same approvers criminate the prisoners in this dacoity. The original proceedings|| afford no corroboration against the prisoners; but others of the gang mentioned by the approvers were recognized

¶ Page 5.

village.

by the chowkeedar¶ of the

\* Wit. No. 3, *Nuffer Bagdi*.

The above approvers and a third\* denounce the prisoners in

many other dacoities.

Defence of the prisoner Nos. 9. Stated before the Committing Officer, that he was a village chowkeedar and that he was obliged to speak against the approvers; and at the Sessions he states that he refused to give evidence in favor of witness No. 1, when he was arrested in a case of dacoity, and that he was instrumental in the capture of witnesses Nos. 2 and 3, when they had evaded process in a case. No. 10, stated before the Committing Officer that he assisted to apprehend witness No. 1 in a case, and that he thrashed witness No. 2, for fishing in his tank; and at the Sessions he states that he used to remonstrate with witness No. 1, for assembling bad characters at his house, and that he told the villagers of the circumstance; he repeats the story of the quarrel with witness No. 2; and affirms that he seized witness No. 3, and took him to the thannah mohurrir. No. 11

stated before the Committing Officer, that there is no quarrel between himself and witness No. 1, and that he is unacquainted with witness No. 2; and at the Sessions he states that he caused witness No. 1 to be removed from the village on account of his bad character; that he seized witness No. 3, and took him to the thannah mohurrir, and that witness No. 2 is the uncle of witness No. 3. There is not the slightest proof of any of the above allegations. Two witnesses to the character of the prisoners Nos. 10 and 11, having spoken unfavorably of them, the remainder were withdrawn.

The prisoners were apprehended long after the confessions of the approvers. The Committing Officer certifies that he adopted every precaution to prevent collusion and that the approvers were kept in solitary cells under separate guards, while they were making their confessions.

I convict the prisoners of having belonged to a gang of dacoits and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The proof against the prisoners on the first count, consists of the testimony of the two approver-witnesses. That testimony agrees with the general confessions of these witnesses, which were taken previous to the apprehension of the prisoners. The Sessions Judge relies for corroboration of the testimony of these two witnesses on the record of the dacoity, shewing the same main incidents, as those related by the approver-witnesses, and on the fact that amongst these incidents was that of Roopchand Haree having been stated to have taken a prominent part; and having been seized, and confessing, naming witness No. 1. Exclusive then of these incidents, and of the naming of witness No. 1, there is nothing to connect the identical prisoners now before me with the dacoity charged, by any evidence or record, irrespective of the testimony of the approver-witnesses, and the fact of that testimony tallying with their original confessions. The names of the prisoners in no way appear on the former records; or in the evidence or statements of any independent witness, or of any other persons. The Sessions Judge seems to consider that as the testimony of these approver-witnesses was accepted as trustworthy in the case of Modon Doolly and another, tried on the 28th May, therefore it is or ought to be sufficient in this case. But on referring to Modon Doolly's case, I find that in addition to the testimony of the approver-witnesses in that case, one of the prisoners had confessed to the Deputy Magistrate that he was engaged in the dacoities charged in the two counts, and there was the "independent evidence referred to by the Judge," viz.: that of "the chowkeedar of the village who at the time named them (the prisoners) in his depositions before the Darogah and Magistrate." It is therefore not correct to

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consider the cases similar, or to leave it open to doubt that evidence accepted in one case, is ignored in another similar one.

On the *second* count, the Sessions Judge states "the original proceedings afford no corroboration against the prisoners :'" in fact, *as regards the identity of the prisoners*, we have nothing but the testimony of the approver-witnesses.

The defence is contradictory and unsubstantiated.

The question for decision here is whether a conviction can be maintained on the 1st and 2nd counts upon the testimony of the two approver-witnesses, *un*corroborated by any independent proof connecting these *identical* prisoners with the two dacoities charged ; and on the 3rd count, upon the testimony of three approver-witnesses, two being the two abovementioned, whose testimony and general confessions shew altogether fourteen dacoities in which all the prisoners are deposed to have been concerned.

I do not think it is legal to uphold convictions where the testimony of approver-witnesses is neither directly or circumstantially supported, as to the *connection of the identical prisoners with the particular crimes charged*, or with the *general* charge of belonging to a gang of dacoits, by *any independent* proof of such *identity and connection*.

Where there is sufficient *independent* corroboration on those two points of identity and connection, I would uphold a conviction ; but a corroboration as to *incidents only*, with which the identical prisoners are not shewn to be connected by proof of any kind, independent of the testimony or confessions of the approver-witnesses, is not, in my opinion, legally sufficient. It may be urged that if the approver-witnesses are shewn to have deposed truly to *incidents* of a dacoity, they may be fairly presumed to have deposed truly to the *persons* concerned in it. This, however, is, I think, not a matter for presumption, but the testimony of an approver must, on legal principles, be independently corroborated, directly or circumstantially, on the point of the connection of the *identical* prisoner with the offences charged in the counts in the Calendar.

On these grounds, I acquit the prisoners, and direct their immediate release.

PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

SHEIKH EEDOO (No. 3,) KOORAY MULLICK (No. 4,) SHEIKH SEKUNDUR (No. 5,) SWORROP NODAH (No. 6,) SHAGORE DOME (No. 7,) ABDOOL LUSKUR (No. 10 APPELLANT,) AND DEENOO SURNOKAR (No. 11.)

24-Pergunnahs.

1857.

CRIME CHARGED.—1st count, Nos. 3 to 9, dacoity on the night of the 21st March, 1857, in the house of Wajeeb Ali of Hajaghatta, thannah Rajapore, zillah Howrah; 2nd count, Nos. 3 to 5, 10 and 11, having unlawfully and knowingly received and bought cash and property stolen and plundered by dacoity; 3rd count, No. 11, accompliceship in the crime charged in 2nd count.

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CRIME ESTABLISHED.—Nos. 3, 4 and 5, dacoity and having unlawfully and knowingly received or bought cash and property stolen and plundered by dacoity; Nos. 6 and 7, dacoity; No. 10, having unlawfully and knowingly received or bought cash and property stolen and plundered by dacoity; No. 11, accompliceship in the crime of having unlawfully and knowingly received or bought cash and property stolen and plundered by dacoity.

Prisoner  
convicted.  
Pleas in ap-  
peal, based  
upon release  
of other pri-  
soners, being  
over-ruled.

Committing Officer.—Mr. J. R. Ward, Commissioner for the suppression of dacoity.

Tried before Mr. E. Lautour, Sessions Judge of the 24-Pergunnahs, on the 18th June, 1857.

*Remarks by the Sessions Judge.*—The house of Wajeeb Ali at Hajaghatta, thannah Rajapore, zillah Howrah, was attacked by dacoits on the night of the 21st of March last, 9th of Chyet, during the absence of his son Ashrup Ali, who was then at his father-in-law's house, at Betpara, distant five miles, where he had removed his children, in consequence of the great virulence of the Cholera in the village of Hajaghatta, and amongst the many victims to which, his wife and his brother fell victims.

The next morning witness No. 3, Sheikh Nowajee came to Betpara and gave his master information, and he returned immediately home, and the Darogah, to whom information had been sent at the thannah, distant ten miles, arrived at the premises at 3 P. M. on the day next ensuing, viz. 22nd March, 10th Chyet, and recorded the deposition of Ashrup, and a preliminary report was transmitted to the Magistrate on the evening of the 22nd.

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In the wall of one of the rooms there was a secret recess, in which the family articles of value were kept in a pot, and the hole closed up and covered with plaster, so as to conceal it effectually. This having been broken into and rifled, the suspicion of the prosecutor, was directed towards prisoner No. 3, Eedoo Sheik, who had been a servant ever since his childhood, in the prosecutor's house, and who, about a year and a half previously, had been turned off, in consequence of having been detected with witness No. 30, Motee Musulmani in an intrigue, which led to the discharge of both, who now live together, this individual being entirely familiar with the plaintiff's residence, which he helped to construct.

The Darogah therefore, on the same night proceeded to Seakhali, distant about six miles from the prosecutor's residence and arrested him. He admitted the crime and produced the money, he had received, through his wife, witness No. 30, Motee Mussulmani, amounting to Co.'s Rs. 8, and in due course he was forwarded to the Magistrate, who recorded his confession on the morning of the 24th. The distance from his residence to the Magistrate's Court, is described as being about fifteen miles. This confession implicated Kooray Mullick prisoner No. 4, of Dankooly, a village distant about nine miles from the residence of prisoner No. 3. Sheikh Eedoo, and the Darogah proceeded to arrest him on the morning of the 24th. In his house, in a pot on a *machan*, cash to the amount of Rs. 35-12 was found, and he then confessed, and in consequence of which confession he produced different articles of jewellery or ornaments, some of which were wrapped up in a note written by witness No. 35, Feraustoollah to the prosecutor. This note is dated 11th Falgoon, 1263.

This confession implicating Sheikh Sekundar defendant No. 5, he was arrested and confessed, handing over four rupees, being part of 12 Rs. his share of the proceeds. The two were in due course forwarded to the Magistrate, the defendant No. 4,\* withdrawing from his confession as made to the police, and the defendant No. 5,† repeating his confession.

\* Kooray Mullick.

† Sheikh Sekundar.

A further confession was made by witness No. 1, Juddoo Nodah, a person implicated in the confessions of Sheikh Eedoo (No. 3,) and Kooray Mullick (No. 4.) This individual has been made an approver in the present case. He has been sentenced in another case, in which he had been convicted, as belonging to a gang, having been concerned in the seven dacoities. The date of this sentence is 26th of May, 1857.

The confession of Kooray Mullick No. 4, led to the arrest of the prisoners Nos. 10 and 11, viz. Abdool Luskur and Deenoo Goldsmith, who were forthwith apprehended and they admitted

having purchased part of the plunder, which was produced by Abdool Luskur, prisoner No. 10. They were apprehended on the 24th, and their confessions were recorded on the 25th. The Commissioner of dacoity in his remarks notices, that the Darogah was occupied during the 24th with the prisoners Nos. 4 and 5, Kooray Mullick and Sheikh Sekundur, and in searching the houses of some nine different prisoners. The above prisoners were sent in during the 25th. The other prisoners, who pleaded *not guilty* before the Magistrate and Police, were arrested on the 24th and 25th. The Commissioner of dacoity, notes, that the first prisoner, who confessed, was arrested on the morning of the 23rd and the last party to confess was before the Magistrate at Howrah, on the morning of the 26th, and that the Darogah had recorded no less than seven confessions in detail, viz. prisoner No. 3, Eedoo's, prisoner No. 4, Kooray's, prisoner No. 5, Sekundur's, prisoner No. 10, Abdool Luskur's and prisoner No. 11, Deenoo Surnokar's and Jadub Nodah witness No. 1, (approver) and Motee Mussulmani, witness No. 30, released and examined as a witness in this Court and in the Magistrate's. In addition to this, the Darogah had sent in five long reports and searched twenty-one houses besides preparing all the different *chalans* and taking different depositions, so that, had the Darogah been so disposed, he would scarcely have had the necessary leisure for constructing a plot.

Every thing that belonged to the plaintiff or his father was carried off, amounting to Co.'s Rs. 723-14-3, of which 154 Rs. has been recovered. Of this Rs. 47-12, is cash, and the remainder, various silver ornaments.

The whole of the prisoners deny the charge.

The premises were occupied by the plaintiff's father Sheikh Wojid Ali, his sister and sister-in-law. The former is an old man and was slightly beaten and the women seem to have made their escape.

*Prisoner No. 3, Shiekh Eedoo.*—The first person arrested was Eedoo Sheikh, prisoner No. 3. He was captured in his own house on the night of the 22nd, his defence or confession was taken on the 23rd, and he was before the Magistrate on the 24th, when his confession was again recorded.

In his mofussil confession, he stated that on the 21st of March, Sworooop Cowra and Neeloo Cowra, and Khega Cowra and Gya Cowra and Geragopal Cowra and Netagopal Cowra, Gopy Telly and Koilass Bagdee and Kooray Mussulman, and three of his gang, and a vintner from whom witness No. 1, Jadub Noda (approver) was in the habit of being supplied, and four or five of his gang, names unknown, all of them, Hindoos, came to his, prisoner No. 3, Eedoo's house, during his absence, of which his wife gave him notice and he returned home.

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That about 8 p. m. prisoner No. 4, Kooray Mussulman and another came and told him that the rest were all assembled at the Gole tank and that they were about to attack the plaintiff's house, and that he must join them. That being persuaded we went with him, and found about twenty men assembled there, armed with pointed bamboos, *lattees*, &c.; that at midnight they proceeded to attack the plaintiff's house, first posting sentries outside; that one of the party got in through the window and opened the door from the inside, and that plaintiff's father coming out was knocked down; that all the boxes, chests and *pettarahs* were broken open, and that the secret recess was broken open, and that on a division of the spoil, he received Co.'s Rs. 8, but no silver ornaments, and then he goes on to say, what he heard that others had done in the disposal of their share of the property, but those parties not being under trial, it is unnecessary to go into this part of his statement. Before the Magistrate his statement is substantially the same.

In the Sessions Court, he wholly denies the charge. He points out that the woman, witness No. 30, Motee Mussulmani was the mistress of Sheikh Wojid the plaintiff's father and that this case has been got up out of spite by the plaintiffs in concert with the police; that the confessions made by him before the police and the Magistrate were in effect just whatever the police and the omlah chose to record, and he names witnesses to character, who have been examined.

I consider that the charge is fully supported against this prisoner. He had been from childhood in the service of his master, the prosecutor, and a year and a half ago, he made off with witness No. 30, Motee Mussulmani and the two now live together.

The evidence against this individual is first, his two confessions as recorded on the 23rd and 24th of March. The confession of Kooray Mullick. The deposition of the approver-witness No. 1, Jadub Nodah, and the deposition of witness No. 30, Motee Mussulmani, as to the prisoner No. 4, and others coming to his house, and his going out with him to commit this dacoity and the evidence to the production of the money by him, witnesses Nos. 2,\* 3† and 13.‡

\* Wit. No. 2, Bheloo Mullick.  
† Wit. No. 3, Sheikh Moajee.  
‡ Wit. No. 13, Soomeeruddy Sheikh.

Looking at all the circumstances of this case, his former connection with the plaintiff from childhood, I have awarded the highest penalty the law admits of, and I have sentenced him to fourteen (14) years' imprisonment, and two more in lieu of corporal punishment, in banishment.

*Prisoner No. 4, Kooray Mullick.*—With this prisoner the proceedings of the Darogah are transferred to Dhankoli where

this prisoner resides. He was arrested upon the confession of

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\* Sheikh Eedoo.

prisoner No. 3,\* on the 24th of March. The village of Dhan-

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koli is stated to be about twelve miles from Seokhali where prisoner No. 3, Eedoo Sheikh, resides. In his house 35 Rs. cash was found and then he produced various silver ornaments from some creeper jungle in front of his house and confessed, implicating Gopal Cowra, Gopal Telly, prisoner No. 3, Sheikh Eedoo, prisoner No. 7, Shagore Dome, Modhoo Sooree, witness No. 1, Jadub Nodah, Chunder Nodah, prisoner No. 6, Sworooop Nodah, prisoner No. 9, Soleem Akhoon, prisoner No. 8, Sonaoolah Akhoon, Alassee Sheikh, Koilass chowkeedar, prisoner No. 5, Sheikh Sekundur. The confession tallies generally with that of prisoner No. 3, Sheikh Eedoo. He mentions the performance of the Kalee *poajah* by prisoner No. 7, Shagore Dome. In addition to his share of the division, he states that he concealed a bag of 20 Rs. He implicates prisoner No. 11, Deenoo Surnokar as being the professional receiver of the gang generally.

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This prisoner has been convicted on his own confession before the Darogah, supported by the discovery of a large sum of money in his house, and the production of the ornaments from the jungle in front of his house. The implication of this man in the original confession of prisoner No. 3, Sheikh Eedoo on the day preceding; the evidence of Sheikh Russee at whose house, he and others of the gang ate; the evidence of witness No. 30, Motee Mussulmani, the mistress of prisoner No. 3, Sheikh Eedoo, at whose house the gang assembled on the evening, and the evidence of Manollah; his absence on the night of the dacoity, as reported at the time. Amongst the ornaments produced by him some were found wrapped up in a letter written by Ferasut Ally (witness No. 35,) to his father and brother, the prosecutor; he is further implicated by Sekundur, (prisoner No. 5,) Abdool Lushkur, (prisoner No. 10,) Denoo Surnokar (prisoner 11,) in their confessions, and he is a person of bad character, and has been more than once arrested for dacoity.

He denied the charge, and stated that he and his wife had been maltreated; that he knew nothing whatever about Rs. 35-12 found in his house; that those who hid the different ornaments about his premises produced them. That the police put the money into the rice jar, where it was found. That the Magistrate went to the spot to satisfy himself of the truth of matters, having his doubts and that the native doctor had seen the marks of his maltreatment.

This prisoner was arrested on the 24th, his confession was taken on the 24th, he was before the Magistrate on the 25th, when he denied his confession. His witnesses, three in number,

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were examined, and I sent for the native doctor, although he was rather referred to than cited; but he being absent on the public service, and in the good faith observable in the proceedings of the police, his confession immediately following his arrest, and his transmission to the Magistrate immediately following his confession, quite do away with any idea of maltreatment, as he denied the charge before the Magistrate, and had there been any marks on his person, he would doubtless have offered them to the inspection of the Magistrate, in proof of his statements. Taking his evident headship into consideration, coupled with his previous bad character and his previous arrests for dacoity, I should fail in my duty to the community, were I to sentence him to a shorter period than the full term

\* Sheikh Eedoo.

I can legally sentence him for. He has been sentenced as

witness No. 3.\*

*No. 5, Sheikh Sekundur.*—This prisoner, confessed before the police and Magistrate and denied the charge in the Sessions Court. He lives at Dhankoli. He produced Co.'s Rs. 4, admitting that he had disposed of the rest. His own confessions, and the evidence of Manoollah, Motee Beebee witness No. 30, bring the crime home to this prisoner. This is his first offence, so far as we know to the contrary and on the record, I convict this prisoner and sentence him to seven years' imprisonment in banishment.

*No. 6, Sworoo Nodah.*—This prisoner denied the charge all through. He is convicted on the evidence of Jadoo, witness No. 1, and Motee, witness No. 30; he is clearly shown to have been absent on the night of the dacoity; he is implicated by all the confessions and by the receivers of the property, and he bears a very bad character.

† Sheikh Eedoo.

‡ Kooray Mullick.

Convicted and sentenced as Nos. 3† and 4.‡

*No. 7, Shagore Dome.*—This prisoner denied all through. He is convicted on the evidence of the approver, the evidence of witness No. 32, Manoollah; the confession of prisoner No. 10, Abdool Lushkur, and he is moreover implicated in all the confessions and bears the worst possible character. Convicted and sentenced as prisoners Nos. 3, §4|| and 6.¶

§ Sheikh Eedoo.

|| Kooray Mullick.

¶ Sworoo Nodah.

*No. 10, Abdool Lushkur.*—

This prisoner is the receiver. He confessed before the police 25th March. He denied before the Magistrate stating that he had been maltreated by the police; that the Darogah, sworn by the Jumma Musjid, he would release him, if he confessed, so accordingly he adhered to whatever was written. That then Jadub Nodah, witness No. 1, who accompanied the Darogah to the bamboo garden belonging to him, telegraphed

then to the N. E. corner, and he produced the different articles. Before the Sessions Court he states similarly that the proceedings of the police were collusive.

This prisoner's conviction rests upon his own confession, the evidence of the approver; the confession of Deenoo Surnokar, prisoner No. 11, the evidence of the witnesses to the production of the property, and the testimony of the witness No. 32, Manoollah. On the facts disclosed, and on the evidence, I convict this prisoner of the offence and considering that so long as these professional receivers are not very severely dealt with, it is hopeless to attempt to suppress dacoity, I sentence

this prisoner to the same period of imprisonment as in Nos. 3,\* 4,† 6‡ and §7.

\* Sheikh Eedoo.

† Kooray Mullick.

‡ Sworooop Nodah.

§ Shagore Dome.

No. 11, *Deenoo Surnokar*.—

This prisoner confessed before the police; denied the charge before the Magistrate and in the Sessions. He is an itinerating goldsmith and has two places of residence, one a lodging and the other his own dwelling-house. He states in his confessions that he was summoned by

|| Abdooi Lushkur.

the prisoner No. 10;|| that he went to prisoner No. 7, Shagore

Dome, and weighed the property there. He implicated witness No. 1, Jadub Nodah, approver. He speaks to the price paid by prisoner No. 10, Abdool Lushkur. He implicates, also prisoner No. 6, Sworooop, as selling different articles to the prisoner No. 10.¶

¶ Abdool Lushkur.

He has been formally implicated

in a dacoity at Simla.

Taking into consideration all the circumstances of the case, its connectedness and agreement, in all essential parts; the confession of this party originally and the evidence of witness No. 32, Manoollah, I convict this prisoner of the offence of

\* Sheikh Sekundur.

privity and sentence him as prisoner No. 5,\* to imprisonment

in banishment with labor for seven years.

Reviewing the whole case which has been under trial Monday, Tuesday, Wednesday, and Thursday, I feel satisfied of the guilt of the parties punished. I feel very doubtful of the guilt of the two acquitted and I should say the proceedings were, in every way, creditable to the police, with the exception of the point adverted to, as to the long arrest of witness No. 30, Motee Mussulnani, prior to taking her answer, her removal from her home to Dhankoli, the taking her answer when her natural protector was absent, after she had passed the night of the 23rd and the 24th in custody of the police and my impression on the whole case, is this, that where parties confess, if they can write themselves, they should record their own con-

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fessions, or be allowed, which would be far better, to send for a friend, who can write, to record and attest what confessing prisoners actually do acknowledge, for such confessions would carry far greater weight with them than those which are at present transcribed by the police mohurrirs.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) Baboo Dinonath Mitter for the prisoner appealing urges *firstly*, that as Sworooop Nodah prisoner No. 6, and Shagore Dome prisoner No. 7, and Deenoo Surnokar prisoner No. 11, have been released by the Nizamut Adawlut (present Messrs. Trevor and Money) on the 6th October, 1857, the charges of receiving and being “an accomplice,” as laid in the 2nd and 3rd counts, cannot be sustained, because, where *their* concern with the property is *not* proved, it follows that the criminality of his client, which is alleged as arising from his having received the goods from prisoners Nos. 6 and 7, in concert with No. 11, cannot be deemed *legally* proved.

I will premise by saying that this argument is futile, inasmuch as the case of the prisoner No. 11, is *not* similar to that of the prisoners named.

The facts in *this* case are these. Prisoner No. 4, was apprehended on the 24th of March, and confessed, indicating the prisoner No. 10, (appellant) as the receiver. *The prisoner* No. 4, has been *convicted* by the very proceedings (6th October) on which the pleader relies. *On the same date*, witness No. 1, then a prisoner, confessed, and indicated the appellant as receiver. In his *evidence on oath* he has deposed to the same thing.

Further, the prosecutor’s property, articles Nos. 8 to 17, were on the 25th March found concealed in *this* prisoner’s garden. This prisoner confessed at the police. His plea in the foudary that the witness No. 1, in collusion with the Darogah, induced him (prisoner No. 10,) to bring out the property, which had been previously put there, is in no way proved; and it is contradicted by his own defence in the Sessions, where he says that he *did not* produce it, but the police did. The evidence of witnesses Nos. 16, 17, 27 and 28, stands unfuted on the point of the production of the property, and that it was *not* produced collusively.

Under this state of facts, I do not see reason to consider the pleas in appeal valid, and I reject the appeal.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT AND ANOTHER

*versus*

DEENOO SHEIKH.

Beerbhoom.

CRIME CHARGED.—Knowingly possessing property stolen in the dacoity committed in the house of Sudoo Mundle.

1857.

CRIME ESTABLISHED.—Possessing stolen property acquired by dacoity.

November 7.

Committing Officer.—Mr. R. J. Wigram, Officiating Magistrate of Beerbhoom.

Case of  
DEENOO  
SHEIKH.

Tried before Mr. O. W. Malet, Sessions Judge of Beerbhoom, on the 10th September, 1857.

Prisoner acquitted; the evidence to the identification of the property being insufficient, and opposed to the facts of the case.

*Remarks by the Sessions Judge.*—On the 20th May, 1857, corresponding with 8th Jyte, a dacoity took place in the house of the prosecutor, but nothing was discovered by the Police.

After some days the chowkeedar of the village informed the Darogah that he had found that some of the stolen property was in possession of the prisoner.

While search was being made in his house, the owner of the adjoining one came in and stated that he had found some brass utensils secreted in the corner of a verandah where he kept his cattle.

On examination among other articles, a brass plate was found, which was claimed by the prosecutor and the defendant allowed that they had been placed by his wife where they were found, and stated that the brass plate, as well as the other articles, was his own property.

On the trial, the chowkeedar\* told a very improbable story of his having overheard a conversation between the prisoner and his wife to account for his knowledge of their possession of the property.

\* Witness No. 4.

However the finding† of it partly secreted by earth and the identification‡ of it by the plaintiff

† Witnesses Nos. 5, 6 and 7.

‡ Witnesses Nos. 3 and 4.

and his witnesses are both completely proved, though the evidence of Nos. 4 and 5, is not very credible.

The defence was a denial and not improbable story by the defendant that when the Police came he was at work in his field, and that his wife who was washing the dishes on seeing the Police coming, had, through fear, hid them where they were found. He claimed the plates as his own, mentioning where he had purchased it and the weight of it.

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He could give no reason for his being at work after his meal contrary to the custom of the country (the dishes being usually cleaned at that time.) There was no proof that his wife had secreted them as he said. There was no proof that the dish was his own, his witnesses being residents at a distance, and apparently but slightly acquainted with him. The alleged seller was not called, and he was wrong as to the weight of the article.

I have found the man guilty of possessing stolen property acquired by dacoity and have sentenced him to five (5) years' imprisonment, with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The appellant urges no special grounds of appeal, but, denying his guilt, prays a reference to the record.

The dacoity is proved to have occurred. The prisoner admits the *thal* to have been found near his premises; he claims it as his own; he admits his wife tried to hide it, but he says she did so, wishing to avoid going into the house with it and other eating utensils, when she saw the Police there.

Witnesses Nos. 2 and 3, depose that the *thal* is prosecutor's; and prosecutor identifies it. Prosecutor says that he bought it at the *Joydeb* fair, and that he knows it by a mark below it. The witnesses Nos. 2 and 3, stated to the Magistrate they knew it because they had seen prosecutor use it, and no other reason was mentioned by them on this point. To the Sessions Judge, however, they depose they knew it *because* it was bought at the *Joydeb* fair, and had a mark below. If they really knew it by these means, it is strange they did not mention these points to the Magistrate. The prosecutor, in his *schedule* of property taken at the dacoity, specifies one *agraee thal* of half a *seer*. Before the Magistrate, he calls this one an *agraee thal*. Before the Sessions Judge he says the weight is *one and a half seer*. The Police *chalan* also states the weight to be one *seer* five chuttacks. The witness No. 3, also deposed before the Sessions that the prosecutor had told him that it was one and a half *seer*.

The prisoner substantiates no defence, and his witnesses state that they do not know to whom the *thal* belongs.

Looking at all the above circumstances, I think the evidence for the prosecution insufficient to warrant a conviction, even if the evidence and proceedings of witness No. 4, Poresch Chowkeedar were not open to much suspicion, as noticed by the Magistrate and Sessions Judge.

I think the prisoner entitled to the benefit of the doubt, and acquit him, and direct his immediate release.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT AND JOYGOVIND DOSS

*versus*

SHEIKH ANEES (No. 1,) SOONDERRAM PALL (No. 2,) PORAN CHUNG (No. 3, NON-APPELLANT,) NOWAZ MAHOMED\* (No. 4,) SHEIKH KOLIM\* (No. 5,) NIMYE PATNEE\* (No. 6,) HAZEE SIRDAR (No. 7,) AND SHIB PALL (No. 8.)

Sylhet.

CRIME CHARGED.—Nos. 1 to 6, 1st count, burglary and theft of property to the value of Co.'s Rs. 1,969-8; 2nd count, being accomplices in the crime contained in the 1st count; 3rd count, No. 7, being accessary before and after the fact contained in the 1st count; 4th count, Nos. 2, 7 and 8, knowingly having in their possession the property obtained by the above burglary.

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Case of  
SHEIKH  
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CRIME ESTABLISHED.—Nos. 1, 2 and 3, being accomplices in burglary and theft. No. 7, being an accessary before and after the fact of the burglary and theft. No. 8, knowingly having in possession property obtained by burglary.

Prisoners  
convicted.

Burglary and  
theft by con-  
victs when in  
jail.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Sylhet.

Tried before Mr. M. Shawe, Sessions Judge of Sylhet, on the 19th August, 1857.

*Remarks by the Sessions Judge.*—This burglary and theft was committed by the prisoners in the jail and jail Hospital in collusion with, or without the knowledge of, some of the Officers belonging to the jail and Hospital, and in consequence of the lax discipline in the jail and the jail Hospital and want of proper supervision and surveillance on the part of the jail Officials.

The first investigation was held by the town Darogah, in consequence of whose neglect and inattention during the enquiry, no trace of the theft was found for one month, nor were the thieves apprehended. It will perhaps be advisable to give a detailed history of the enquiries instituted in this case. The prosecutor resides in the immediate vicinity of the jail Hospital. On the night of the 1st of April last, a burglary was committed in the prosecutor's house, and money and property to the value of Rs. 1,969-8, stolen. On the following morning information was given at the thannah; and a list of the stolen property was filed, but nobody was then suspected of the theft,

\* Acquitted by the Lower Court.

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the Darogah went to the spot, held the usual enquiry, and found a broken box and some silver ornaments left by the thieves near the prosecutor's tank, and which fact the Darogah reported to the Magistrate. A reward of Rs 50, was offered on the part of Government, and Rs. 50, by the prosecutor to any person who would give such information as might lead to the apprehension of the thieves, &c. On the 3rd of April, the prosecutor brought a small iron bar to the Magistrate stating that it had been discovered on the very place, where the stolen property left by the thieves, was found. On the 4th nothing appears to have been done by the Darogah, but on the 5th he reported that a person named Ajoo was brought to the thannah and his statement was taken and afterwards on his going home, he did not return to the thannah. A burkundaz was sent for him, (i. e. Ajoo) and he fled, and the Darogah therefore suspected Ajoo and certain other parties of the theft and he placed a watch on their houses and searched for the stolen property, the record does not show why the Darogah had sent for Ajoo. On the 6th of April the Darogah reported that on searching the houses of Ajoo and the others, no property was found. Ajoo was apprehended by the Police mohurrir, and on his statement being taken by the Darogah, he stated the iron bar brought by the prosecutor was his property. On the 7th of April the Darogah reported that he had searched the houses of several individuals, but found no property, the Darogah also reported that he deputed Bungsogopal Jenadar to watch the houses of Oozeer Bee *kusbee* and others, but as the houses had not been well guarded, he solicited the Magistrate's orders as to how he was to proceed in the matter; the Magistrate without passing any orders on the report, had it filed in the *nuthee*. On the 8th of April, the Darogah forwarded Ajoo to the Magistrate as having confessed the crime, but without making any mention of his previous statement, as Ajoo stated nothing on the 6th, it does not appear on what grounds his answer was again taken on the 8th of April, nor does it appear why he was detained from the 6th to the 8th or for more than forty-eight hours. On the 9th the Darogah took the deposition of Nimye and others, but no trace of the theft was discovered. On the 10th nothing appears to have been done by the Darogah. On the 11th, the Darogah filed his final report and requested that an enquiry as to the character and means of livelihood of the three individuals named in his report, viz. Ahmud Ally, Nimye and Joy Singh should be instituted, but the Magistrate passed no orders on this point. The Darogah forwarded Ajoo merely on the strength of the so-called confession, without any proofs against him. Up to the 30th of April nothing appears to have been done. On the 15th of April, the prosecutor presented a petition to the Magistrate, stating that in consequence of a disagreement

between the jemadar and Darogah of thannah Parcool, the former aids the defendants; he therefore requested that his case should not be inquired into by them (owing to the neglect of the Darogah, proper enquiries into the case were not held, nor the stolen property found) the Magistrate ordered the petition to be filed with the record of the case. On the 20th of April Ajoo presented a petition to the Magistrate stating that the Darogah had beaten and detained him for three days, and extorted the confession from him. On the 1st of May, the jail Darogah reported to the Magistrate that Hazee, prisoner No. 7, told him he had heard certain prisoners in the Hospital talk of the theft, Hazee's statement was taken, and on searching the Hospital, property (No. 1,) was found by Hazee (prisoner No. 7,) in a broken box, and property, No. 2, outside the Hospital and which the prosecutor claimed. On the 3rd May, an anonymous petition was presented to the Magistrate mentioning that the Naib jail Darogah, *the brother* of the Darogah of the Parcool thannah, was in the habit of encouraging certain prisoners in thieving, of which petition no notice was taken by the Magistrate; on the 3rd of May he deputed the nazir and three other *omlahs* of his Office, who apprehended the prisoners of whom Nos. 2 and 3, and 8 indirectly confessed the theft, and produced a portion of the property numbered 3 to 28, the Magistrate committed the prisoners to take their trial before the Sessions Court. I will now proceed to give the evidence of each witness in detail.

The witnesses Nos. 4, 5, 25, 26, 27 and 34 to 48, more or less depose to the effect that previous to the occurrence Hazee, prisoner No. 7, and Anees No. 1, both consulted together about committing a burglary in the prosecutor's house, and that on the day of the occurrence, Hazee (prisoner No. 7,) went to Soonderram Pal (prisoner No. 2,) who was in the hospital, and on his return from thence told Anees (prisoner No. 1,) that their plans were on the point of being carried out; that during the night, the house of the prosecutor would be unguarded and he (Anees No. 1,) under pretext of illness might go into the hospital, and commit a burglary in the prosecutor's house; that Hazee (prisoner No. 7,) at his own expense got an iron bar prepared through Kishoneram, the blacksmith, and gave it to Anees (prisoner No. 1,) who pretending that he was attacked with cholera, went to hospital about 7 o'clock in the evening, and during the same night Anees (prisoner No. 1,) and Poran Chung (No. 3,) got out of the jail hospital, Munnaoollah burkundaz being on guard, broke open the lock attached to the door of the prosecutor's *pucka* house, and having opened the *almirah* and the box inside it with the aid of the iron bar, entered the prosecutor's house, and stole property including gold and silver ornaments and cash to the value of Rupees 1,969-8.

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1857.      That Anees (prisoner No. 1,) took all the money in cash, and, Poran Chung (prisoner No. 3,) the ornaments, and both returned to the hospital, and Hazee (prisoner No. 7,) Anees (No. 1,) Soonderram (No. 2,) and Poran Chung (prisoner No. 3,) divided the booty amongst themselves; that Soonderram (prisoner No. 2,) sent home the property he had obtained as his own share, by his brother, Shibram (prisoner No. 8,) who had visited him a short time after the occurrence took place, certain portions of the property, they (the prisoners) buried near the jail hospital; that Anees (prisoner No. 1,) returned to jail and gave to Hazee (No. 2,) Rupees 8 with which Hazee purchased two *lotahs* and a *dhal* (shield); that some money was seen with Anees (No. 1,) and some gold mohurs with Hazee (prisoner No. 7,) and that Anees having purchased through Peer Mahomed burkundaz sweetmeats to the value of Rupees 5, had distributed them among the convicts in the jail, and that the prisoner offered money to some of the convicts not to give evidence against them, and that they at length bribed all the officers of the jail, except the jail Darogah. The witnesses also deposed to having seen Anees (prisoner No. 1,) melt some of the stolen property in a *katorah*, and that articles Nos. 1 and 2, of the stolen property were pointed out in the hospital by Hazee (prisoner No. 7,) and articles Nos. 21 to 28, were found under-ground near the hospital, and that articles Nos. 3 to 20, which were deposited by Shibram (prisoner No. 8,) with his mother, were pointed out by her, and recovered; that Soonderram (prisoner No. 2,) often told some of the witnesses to send notice to his house, and he was ready to undertake any expense that they might incur; that Hazee (prisoner No. 7,) having received a less sum of money as his share of the stolen property, had threatened Anees (prisoner No. 1,) to punish him, and in consequence a dispute arose between the two prisoners, and Hazee (No. 7,) informed of the robbery, which had been committed in the prosecutor's house; that Hazee (prisoner No. 7,) used to go to hospital or to any place he pleased without being under the charge of a burkundaz, and he and Anees (No. 1,) used to practise the *ghatoo* (a kind of dance) at night within the jail wards, dressing up some of the youngest convicts in colored clothes, playing music, and singing songs, &c., &c. That Anees (No. 1,) although a prisoner in jail, once committed a theft in the house of one Choonee *kusbee*, but which fact was concealed by all the jail officials who had been bribed by him. That certain witnesses in this case gave information of the occurrence to Bunshogopal, jemadar of the Parcool thannah and to certain burkundazes, but they paid no attention to their statement nor did they give any notice thereof to the proper authority. That Poran Chung (prisoner No. 3,) openly declared that no one would be able to convict him in this case unless the stolen property was found,

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and that it was impossible to recover the stolen property which he had concealed. Monoo Singh, witness No. 28, and Khoosah Singh, No. 29, depose that during the celebration of the Door-gah *poojah*, the gold and silver articles in the prosecutor's house were invariably placed before the idol, and as the convicts in the jail hospital were always in the habit of bathing in the tank adjoining the prosecutor's house, it seemed probable that they (the convicts) might have inspected the ornaments previous to stealing them. Witnesses Nos. 4 and 5, state that during the investigation held by the omlahs of the Foujdary Court, the fetters and hand-cuffs on the prisoner Anees (No. 1,) were easily opened, and slipped off. Anees (prisoner No. 1,) when under trial before the Sessions Court, slipped his hand-cuffs off and on, with ease.

The evidence of these witnesses shows that the prosecutor's house being in the immediate neighbourhood of the jail hospital, the prisoner used to bathe in his tank, and to go to his house during the *dusserah* vacation, and thus they had an opportunity of seeing the gold and silver ornaments belonging to the prosecutor, and on the day of the occurrence, Hazee Sirdar (prisoner No. 7,) went to the hospital unattended by a burkundaz, and there he having formed a plan returned to the jail and informed Anees (prisoner No. 1,) of his intentions and gave him an iron bar which he had prepared by Kishonram, blacksmith, a burkundaz, and in collusion with the jail officers. Anees, (prisoner No. 1,) taking the iron bar went to the hospital at 7 P. M. under pretence of illness (vide the Civil Surgeon's deposition) the prisoners Nos. 2 and 3, were also in the hospital, they, with the aid of certain burkundazes attached to the hospital (especially of one Munnaoollah who was on guard) came out of the hospital and committed the burglary and theft, and the prisoners divided the booty among themselves. The prisoners Nos. 1 and 7, bribed the jail officials to conceal the matter. The burglary and theft was evidently committed by the prisoners in consequence of the want of proper supervision by the jail Officials, and owing to the neglect of duty and the lax discipline exercised in the jail. It further appears that Adoo and Khanoo, prisoners gave timely information to Bunshogopal Jemadar of the Parcool thannah, and which probably would have led to the apprehension of the thieves and to the recovery of the stolen property, but in consequence of the jemadar's not disclosing the matter and not keeping a proper watch on the houses which he was ordered to guard, and in consequence of the Parcool Darogah's negligence in conducting the enquiry, probably, in order to screen his brother, the Naib jail Darogah, it would have been difficult to discover the thieves or to recover the stolen property had not Hazee (prisoner No. 7,) being dissatisfied with his mate for not giving him a greater share of the stolen property gave

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1857. up a piece of an ornament No. 1, similar to that left by the thieves, saying it was found in a box of medicine belonging to the Hospital, and had not an anonymous petition been presented to the Magistrate, in consequence of which the Magistrate deputed certain *omlaks* of his office, by whom the investigation was conducted, and the prisoners apprehended and some of the stolen property found. Had the Magistrate, however, instituted prompt enquiries into all the particulars contained in the anonymous petition, the misconduct of the jail Officers would no doubt have been brought to light and also several thefts committed on previous occasions.

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With regard to the lax discipline in the jail, I would here observe that on the 3rd of October, 1856, the Magistrate recorded as follows: "I do not consider the Naib Darogah to be fit for the situation." Again on the 18th of May last, the Magistrate states: "In consequence of this and various other irregularities and malpractices of the Naib Darogah, more especially with reference to my remarks on the 3rd October, 1856, and to the late burglary committed by the prisoners, the Naib Darogah is hereby suspended from employment, and another man will be appointed acting in his place as soon as possible." And on the 20th of May last, Mr. Larkins reports that, "the Naib Darogah is in no way fitted for his situation and has been removed since the commencement of the present month." Notwithstanding the Magistrate has thus strongly expressed his opinion of the unfitness of the Naib Jail Darogah for his situation, he still retains his appointment! To say the least this is very inconsistent on the part of the Magistrate, and in fact improper, he having recorded the removal of the Naib Jail Darogah at the commencement of the month of May last, whereas that individual, I am astonished to find is, notwithstanding, and although pronounced unfit by Mr. Larkins, still in office.

The Mofussil confessions of prisoners Nos. 2, 3, 7 and 8, have been proved by the evidence of witnesses Nos. 1, 2, 3, 4, 5, 7 and 8; and the foudary confessions of prisoners Nos. 2, 3 and 8, have been proved by the evidence of the witnesses Nos. 9 to 19, and witnesses Nos. 7 and 8, and Nos. 20 to 27, deposed as to the recovery of the property, Nos. 1 to 28, valued at Rupees 372-2-5, and witnesses Nos. 28, 29 and 30, recognized the property as belonging to the prosecutor. Witnesses Nos. 31, 32 and 33, deposed to having heard of the occurrence, and seen the broken lock, and the circumstantial evidence proves that the prisoners in the jail walk about without any guard, and during the night some of the younger prisoners dress up, dance and sing, &c. in defiance of all jail discipline, and of course with the connivance of the jail officials. Prisoner No. 1, Anees's handcuffs and fetters were so loose as to admit of their being easily

put off and on, as shewn in Court before me; this proving the neglect of the jail officers, and the lax manner in which they look after the prisoners, the evidence of the witnesses convicts the prisoners Nos. 1, 2, 3, 7 and 8. It will be seen on perusal of the report of the record-keeper of the Magistrate's Court that Anees (prisoner No. 1,) not being able to furnish security to answer for his good conduct was in 1850 imprisoned for a year; in 1852, he was charged with theft, but was acquitted; in 1853, he was convicted of being a bad character and was released on furnishing security; and he was again convicted of being a bad character, and was on the 12th August, 1854, imprisoned for three years in default of furnishing security. Soonderram, prisoner No. 2, being convicted of culpable homicide, was in 1851, imprisoned for seven years. Poran Chung (prisoner No. 3,) was convicted of theft, and was on the 2nd June, 1854, imprisoned for three years. Hazee Sirdar, prisoner No. 7, was convicted of attack and wounding a police burkundaz and was imprisoned for seven years in Moorshedabad, from whence he was transferred to this district. I find no proof against prisoners Nos. 4, 5 and 6. It appears to me that Munaoollah the burkundaz and others who were more guilty were acquitted by the Magistrate, instead of being committed to this Court for trial. The assessors convict prisoners Nos. 1, 2, 3, 7 and 8, and acquit prisoners Nos. 4, 5 and 6, and in which verdict I concur. As the prisoners Nos. 1, 2 and 7, are the principals, I award them a heavier sentence than that awarded to prisoners Nos. 3 and 8, as noted below, and with reference to the very bad character of prisoners Nos. 1, 2 and 7, and their being so frequently imprisoned, they may be deemed incorrigible, and I consider their transfer to the Allipore jail advisable.

*Sentence passed by the Lower Court.*—Nos. 1, 2 and 7, ten years' imprisonment with labor in irons in banishment, and jointly to pay fine of Rs. 1595-5-9, under Act XVI. of 1850, commencing after the expiration of the former sentence. Nos. 3 and 8, seven years' imprisonment with labor in irons in banishment and jointly to pay a fine of Rs. 1595-5-9 under Act XVI. of 1850, commencing after the expiration of the former sentence.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) It will be convenient to consider the case of each appellant separately.

Prisoner No. 1, Anees. A careful consideration of the evidence of the witnesses for the prosecution, and of the facts on the record satisfies me that this prisoner has been properly convicted. In his appeal he urges (1), that the enmity of one Bakir Mahomed caused this false case to be got up; (2), that he was kept in jail in default of security for good behaviour, although his security bond was always ready to be produced;

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1857. (3), that there is a contradiction in what the Magistrate and Sessions Judge state as to the use by him of the iron-bar; (4), that persons cannot commit thefts in jail; (5), that he was in irons; and (6), that no property was found with him. There is no proof whatever of the first two pleas. The third does not affect the weight of evidence against him, as to be judged of in this Court; the fourth plea is futile; and refuted by the evidence of those who depose that the prisoners when bathing had full means from the jail tank to see into prosecutor's premises, and that the latter adjoined the jail; the fifth plea is in a great measure contradicted by the appellant's own act at the Sessions where he slipped his hand-cuffs off before the Judge, and by the evidence of witnesses Nos. 4 and 5, who saw his fetters examined and found to be loose; and lastly the negative fact in the sixth plea does not outweigh the direct evidence against him.

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Prisoner No. 2, Soonder Pal. I see no reason to distrust this prisoner's confessions; they are, however, both before the police and Magistrate, only to the extent of privy and receiving the goods. But there is against this prisoner the independent evidence of the witnesses for the prosecution as to his being an accomplice with prisoners Nos. 1 and 7. Further there is no doubt as to the finding of the stolen property, article No. 1, in the jail medicine-room of which the prisoner produced the key; and the property Nos. 3 to 20, was found with a relative, and produced by prisoner's mother as that which had been sent by this prisoner No. 2, through his brother, prisoner No. 8. The Magistrate in his grounds of commitment thus records the finding of the article, No. 1, "I myself went to the hospital to obtain some clue to the missing property. I would here observe that the morning succeeding the theft, the 1st of April, I had proceeded to the house of the prosecutor, and found during search a silver bracelet lying near certain broken boxes belonging to the prosecutor, some few portions (pyagees) of which were still missing. Shortly after, search was commenced in the hospital. The police on proceeding to search the medicine-room which was under the charge of Soonderram Pal, Dresser Cooly, there was found according to Hazees (prisoner No. 7,) pointing out, two small portions (pyagees) of a silver bracelet which on comparison were found to belong to the bracelet which I myself found outside the plaintiff's house a month previously." (The Magistrate might have tendered himself as a witness on these points.)

There is also the evidence of independent witnesses to the fact of the property Nos. 3 to 20, having been sent by this prisoner to his brother. Moreover the prisoner does not deny it, but urges at the Sessions trial and in his appeal, that he had received the articles in pledge from Bunnoo burkundaz; he adds (which does not seem to have been noticed) that the money

Rs. 30, advanced by him on that pledged property was money taken from the Government cash allowance of the hospital. All these circumstances corroborate the truth of the charge against him. His further pleas in appeal that he could not steal in jail, that the evidence is only hearsay, and that he was put into a dark room with reptiles till he confessed, are not in any way proved, and do not avail against the evidence for the prosecution, and the circumstantial proof on the record.

Prisoner No. 7. There is full evidence for the prosecution as to this prisoner's accessoryship before and after the fact; and he is clearly proved by independent evidence to have pointed out the article No. 1, referred to in the case of the previous prisoner. His appeal is to the effect that there were no eye-witnesses; that he was in hospital, and could not steal; and was well off, and had no occasion to do so; and that no property was found with him. I consider these pleas invalid against the weight of evidence criminating him on the charge on which he is convicted.

Prisoner No. 8, confessed to receiving the goods, articles Nos. 3 to 20, as stolen property, and the independent evidence proves the confessions to be true. His appeal is to the effect that the property was given to him by his brother as pledged by Bunnoo Burkundaz; that the omlah wrote what they pleased; and that it is illegal that he should have to restore the value of the property. The first plea is in no way proved. As to the second the confessions are duly certified by the Magistrate, and proved to have been voluntary; and the third plea is erroneous under Section 1, Act XVI. of 1850.

I see no reason to interfere with the convictions; and reject the appeals.

Looking to the previous convictions of the prisoners, and the circumstances of the case, I see no reason to interfere with the sentences.

I observe that the Sessions Judge has been instructed by the Judge in the English department on a perusal of Statement No. 6, to submit a copy of his remarks to the Hon'ble the Lieutenant Governor and to the Inspector of jails. It is unnecessary, therefore, to record anything as to the state of the prison discipline of the Sylhet jail, as shewn by the record of this case.

I also observe that the Town Darogah is stated to be the brother of the Jail Naib Darogah, who in 1856, was considered unfit for this office; and yet the investigation of this case was entrusted to the former by the Magistrate.

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PRESENT :

A. SCONCE AND J. S. TORRENS, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND SREEMUTTY BORODA DABEEA

*versus*24-Pergun-  
nahs.GUNESH TEWARY (No. 1.) AND CHUNDERNATH  
ROY\* (No. 2.)

1857.

November 17.

Case of  
GUNESH  
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CRIME CHARGED.—(No. 1.) 1st count, dacoity in the house of Kassinath Roy, attended with the murder of Kassinath Roy and plunder of property to the value of Co.'s Rs. 655-4; 2nd count, being an accessory in the above crime. No. 2, 1st count, being an accessory after and before the fact of the above crime.

Prisoner convicted, and sentenced capitally, under Sec. 4, Reg. VIII. 1799, as a willing accomplice in the murder.

Committing Officer.—Hon'ble A. Eden, Officiating Joint-Magistrate of Baraset, zillah 24-Pergunnahs.

Tried before Mr. E. Lautour, Sessions Judge of 24-Pergunnahs, on the 1st August, 1857.

*Remarks by the Sessions Judge.*—On the morning of the 26th of May, the body of deceased was found lying on the bed with its head only attached to it by a piece of skin.

Reported to the jemadar of Phary Jagoli, thannah Nyhattee, on that day, by the chowkeedar of Ratsala, (in which village the deceased resided) and the gomastah.

In a second report, 26th idem, the jemadar states finding the body as above reported and directing Chundernath to bring the widow home from her father's, she having been staying at his house, at Sontosepore, and reports the dispatch of the body.

Chundernath Roy is a near relative of the deceased, and lived in the next house immediately adjoining. Chundernath Roy is the prisoner No. 2.

On the 27th idem the Darogah reports the examination of the widow, the prosecutrix, and her estimated loss of property missing is stated as per schedule to amount to Rs. 655-4, states that although there was ill blood between her late husband and Chundernath Roy prisoner No. 2, she does not suspect him of the murder. Her deposition runs in these terms.

"Was at Sontosepore, with her father Gocoolchand Holdar, yesterday (26th) at noon intimation was brought to her by Prem Bagdee witness No. 14, that her husband had been murdered on the Monday night (25th), &c. she set out to return and met his body under despatch to Baraset. Examined the premises; missed all the property as per schedule: suspects

no one. That although there had been a previous feud between deceased and Chundernath prisoner No. 2, Madhubchunder, Baneshchunder, Teencowry, Degumber Chatterjea, Bestoo Roy and Callachand, that had been amicably settled and the deponent does not believe this case to be in any way connected therewith. Neither does the deponent think that this was the act of dacoits, as they would have taken the property, but not the life of her late husband. Her property was kept in a box in the North-west room. Her husband's box was in his room; deponent was never allowed to see its contents. Heard there was 600 Rs. there. Her husband kept the key on his person; presumes the murder was in immediate connection with that. The key was found covered with blood: the keys of both boxes were found.

"During the past year her husband had complained, apprehensive of his life against Chundernath Roy, in connection with opposition made by the latter to his building a wall, upon which a burkundaz was deputed; this was in Magh last, (January, February,) Callachand Coparcener with Chundernath and his gomashta Greeschunder Chuckerbutty interfered with the deceased in his constructing the wall. Her husband said he should complain at Baraset; cannot suspect them of his murder. Her husband was alone on the night of the murder and had no servant, and her sister-in-law Luckhimony was staying at her father's house at Jagpore."

28th May, Darogah reports examination of Luckhimony (sister-in-law), Teencowry Debya (her sister), Grishchunder Roy (immediate neighbour), Premchand, Kartick, Hurran, Callachand, Sartuck Ghose, Issur Doss. No suspicion against any one; reports that it must have been the work of a deadly enemy and there must have been five or seven employed. Alludes to the enmity with Chundernath prisoner No. 2, which the prosecutrix admits, but does not accuse him. From hints dropped by Luckhimony Debya, suggests, that as Chundernath is related to the Nuddeah Rajah, people are afraid to name him, and that the Magistrate should himself send for the prosecutrix and examine her, which course followed. Orders 29th May, 1857.

Before the Magistrate prosecutrix states, "receiving information by Prem Bagdee witness No. 14, proceeded home escorted by her brothers Juggutchunder and Benymadhub; met her husband's body on the road; was conveyed home by her brothers, found the bed covered with blood; saw no weapon; the lock was broken, contents of her own box, various brass utensils (specified.) In her husband's box in a *handi* 600 Rs. all gone; quarrel with Chundernath prisoner No. 2, who was always threatening her husband, that he would murder him. That she had accused him of the murder to the Darogah. That Chundernath prisoner No. 2 was always aiming at the destruction

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of them and their caste. Her husband was alone at home, which afforded the desired opportunity. Suspects him accordingly. These quarrels were matters of notoriety. Chunder Roy prisoner No. 2, is a notorious receiver of stolen property, which he keeps in Greeschunder Chuckerbutty's house at Berne. That she was afraid to implicate him. That he also carried on an intrigue with Must. Bama, the daughter of Bunsy Roy. They must have known something of the business. Found the keys as above recorded. Had gone fifteen days previously to her father's; three quarter of the neck had been cut through; is unable to say whether Chundernath prisoner No. 2, had any weapons; that Premchand witness No. 14, Suddanund and Banomali, were cognizant of his constant threats; her husband dealt in grain. Had a business of about 3000 Rs. The money was in Company's Rupees (date 30th May.)"

In this Court, repeats the above, adds, "that she stated to her brothers, that Chundernath prisoner No. 2, must have done the deed; proceeds as above; details the state of the premises; mentions her ignorance of what property was in her husband's box; Chundernath prisoner No. 2, is her cousin. Since the birth of her eldest son, there has always been ill-will between him and her husband. Has another son, two years old. Her mother being in deep grief at the loss of her younger son, (the deponent's brother) she had gone to her fifteen days previously; repeats statement above recorded, states the discovery of a *chador*,

This is the clue by which the prisoner No. 1, was discovered. in the empty *golah*, as if some one had slept on it; there were eighteen mango stones heaped there and an *handi* with flour in it and same betel-nuts and *pan*. In the corner of the *chador* a note was tied up: all these the Darogah examined and in consequence arrested Hurree Roy witness No. 20, who admitted being the writer of the note; that he had given it to Gunesh Tewary prisoner No. 1, to deliver to Hurree Roy witness No. 20, and Mohanund Roy, produced Gunesh Tewary; heard he had confessed in mofussil and before the Magistrate. He pointed out to the Darogah all the particulars of the murder, as to place and incidents, which deponent cannot recall to mind; presumes that the murder must have been committed by a sword. There was a great pool of blood in the centre room and on the bed: Gunesh Tewary prisoner No. 1, was a servant with her sister-in-law (husband's sister) Must. Sunkery of Srikishenpore, whom he robbed; then he took service with Hurree Roy of Futtehpore. Her husband had a considerable sum in ready money and a flourishing business."

Examination before the Magistrate continued, 25th June, 1857.

"Sunkery's husband Gobind Gangooley is dead, leaving a daughter and three grandsons and a *lota* full of Rupees, and her

jewels; this she heard from Sunkery. The money was kept with Ruggonath, her husband's elder brother; after his death her husband had it. This was kept in the chest. Sunkery died a year ago. Her daughter and grandsons were at Srikishenpore; she never demanded the money. Heard from her husband, the particulars of the intrigue between Chundernath prisoner No. 2, and Musst. Bama; there was ill-will on that score and the families did not eat together; knows Gunesh, who is a servant with Denobundo Gangoley's father Deenoo Gangoley, at Srikishenpore, with whom ill-will about the estate of Sunkery; accuses Chundernath prisoner No. 2, and Gunesh prisoner No. 1. In answer to defendant states that on performance of her mother-in-law's funeral obsequies, Chundernath Roy prisoner No. 2, ate with them. That subsequently there was a dispute about the wall, constantly, Chundernath prisoner No. 2, would abuse and threaten her husband."

The confession of Gunesh prisoner No. 1, before the Darogah is recorded in these terms.

"On being shown the *chador* and the note, admits that the *chador* is his, and the note that of Mohanund Roy, brother of Hurrinarain Roy, witness No. 20, to Anund Moorkerjea of Preonogore, his gomastah, was given to him by Sreenath Roy, witness No. 21, for delivery. That the note was written by Hurrinarain Roy, witness No. 20, the Naib of Radhanath Gangoley Deputy Collector, talookdar, of Mangah Degolgow. That Sreenath Roy, witness No. 21, had given it to him to deliver to Anund Mookerjea the gomastah at Preonogore; he had gone to the village of Berabari, so he returned to Huripokoria and told Sreenath, witness No. 21, and that night he remained at a village called Baraset; next day in hope of getting an engagement, he went to his old master, Denonath Gangoley, of Srikishenpore, and had his meals there that night. Deenonath and Adheenath Gangoley said to him, that Cassinath Roy, through his sister (Sunkery) had possessed himself of a great deal of their money, that he should murder him and bring the money to them. Under their orders, he went the next day, to inspect the premises, and to see who was with him. He arrived there at 11 A. M. had his meals there; ascertained that he lived alone: returned to the Gangoleys and told them. They said, Come two days hence, so he went away to the gomastah of Fakoo Gram and two days after on the 12th Jhet, he returned to the Gangoleys. They kept him. The next evening Nata Bagdie of Srikishenpore, Dookya Bagdee, Muddun Bagdie, Jaddoo Sirkar, Turoa Sirdar, Chassa Dhoba arrived and Denobundo and Adheenath (Gangoley) went with him, and at 7 P. M. arrived at the indigo-factory of Buydinath Gangoley; where we met those five, thus making eight in all. Thence we went at 9 P. M. to the hall (*dalan*) of Chundernath Roy's (de-

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 November 17. strangers of the Bagdee caste of Batsala and Chundernath Roy  
 Case of prisoner No. 2, and Kartick Kyburto, we sat down and smoked.  
 GUNESH The two Gangoleys (Deenonath and Adheenath) and Chunder-  
 TEWARY. nath prisoner No. 2, remained there. The rest were sent into  
 the house of Cassinath and the nine entered by the South East  
 corner. They said he was eating; so Dookya, Muddun, Nata,  
 Kartick, went into the *golah*, he, Jadoo, Taron and the two  
 Bagdees (of Batsala) hid themselves amongst some vegetables,  
 Cassinath finished eating; came out; washed his mouth put  
 down his *lotah*, and went out of the west door, upon which the  
 gang went into the north room, put out the light and remained  
 concealed there. Cassinath returned; struck a light, smoked  
 and went to bed and was soon asleep. He, Jadoo, Taron, Mud-  
 dun, Dookya, Nata, Kartick and the two Bagdees came out of  
 their hiding-place and seized him as he slept, Dookya with a creese  
 cut his throat; then they opened the door; struck a light and lit  
 the lamp; that he, Jadoo and Taron, then entered the house;  
 when they heard Muddun had done the deed, they then robbed  
 the house; in the big chest were the *lotas*, which they left. This  
 was in the west room. Then they broke open the chest in the  
 east room, found in it two hand boxes which were heavy; there  
 were four or five *lotas* and two brass dishes and four or five  
*kutoras*. Tied them up in bundles, removed them: shut up the  
 principal door, opened the east door, refastened it and came out  
 into the entrance. It was decided not to take the *lotas*. So these  
 were thrown aside, under the *golah* and other places; returned  
 to the *dulan* in prisoner No. 2, Chundernath's, Deenonath and  
 Adheenath took the boxes from them and asked us, what had  
 been done? we answered what was to be done. The Gangoo-  
 leys then went into Chundernath prisoner No. 2, he being asleep  
 in the south room and returned after some time empty-handed,  
 and said, there was not so much money after all. Go home, and  
 two days hence they would have their reward. So the Gan-  
 gooleys (Deenonath and Adheenath) and he (prisoner No. 1,  
 Gunesh) Taron, Dookya, Muddun, Nata and Jadoo went back  
 to Srikishenpore and smoked at Deenobundoo's house. He,  
 Gunesh, remained the night. Kartick and the two Bagdees, he  
 found sitting in the *dulan*; (Chundernath) is unable to say  
 where they went to. Had not been able to deliver the note.  
 Had taken a quantity of mangoes in the *chador* from Srikishen-  
 pore, Dookya; Muddun, Nata, &c. went into the *golah* and ate the  
 mangoes there; left the *chador* behind inadvertently. On the  
 following day, left for Kurrogram; returned to Srikishenpore, two  
 days after and Deenobundoo gave him 6 Rs. which he has  
 since spent; owing to the discovery of the note has been  
 arrested by the burkundaz. The bundles found on the top of  
 the wall, they had removed from the house. Cassinath's sister

Sunkery was the wife of Gobind Gangooley, the uncle of Deenobundoo; quarrel between them. She pilfered his money and placed it with Cassinath, whereon ill-feeling; also between him and Chundernath prisoner No. 2; was servant with the Gangooleys four or five years ago; was then in the habit of going to Cassinath's sister (Sunkery), died eighteen months ago; her daughter is alive; Deenonath and Adheenath and Chundernath Roy prisoner No. 2, on the first Bysackh, settled to murder him; was with the Gangooleys then. They told him they had been to Chundernath prisoner No. 2, to consult him. Does not know the name of the two Bagdees at Butsala, and is unable to say whether the rest of the gang was paid or not; Cassinath's friend and a chowkeedar know that I went to his house; points out Greeschunder Roy witness No. 1, and Degumber witness No. 7, as being persons who saw him there; met no one on the way: there was no drinking; Dooky had a creese; cleaned our hands on the bedding and washed them on the way home.

In all material points this confession was adhered to in the Magistrate's Court.

In this Court, he states, "his voluntary surrender to the Darogah, and that he, Muddon Bagdee, Dookya, Nata, Taron, Jadob Sircar, Deenobundoo, Adheenath, these eight and three others from whom the Darogah took bribes and suppressed their names, viz. Nemaye of Noorpore, Mudhoo his brother, and Kartick Kyburto and three men of Butsala, viz. two Bagdees, &c. and prisoner No. 2, Chundernath Roy, this man here present, assembled at prisoner No. 2, Chundernath's house; had their tobacco; after which prisoner No. 2, Chundernath Roy, sent Nata Bagdee and another, to see what Cassinath was about, returned and said he was eating. He, prisoner No. 2, Chundernath and Deenonath and Adheenath, directed them to proceed; and finish the business. They went; Taron, Jadoo and he prisoner No. 1, Gunesh remained outside; five or seven (*panj, sath*) went into his house; found him eating; seized him, threw him on the bed, cut his throat; at which he Gunesh endeavoured to cry out, so they stopped his mouth. Is "*hedesy gurreeb*"\* (comes from Lucknow) this is the truth, let the Judge do what he pleases."

Prisoner No. 2, Chundernath Roy was arrested by the Magistrate's order on the deposition of the prosecutrix. He denies the offence throughout. In the Sessions Court, he brings witness (No. 24,†) as being with him that night, brings numerous witnesses to character; states that Cassinath and his wife were always quarrelling; that he used to reprobate her conduct; that on the death of Cassinath's mother, he superintended the funeral feast *shraddh*.

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\* Note: i. e. poor foreigner.

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The prosecutrix's statement has been already given.

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No. 1, Greenschunder deposes to having seen Gunesh (defendant No. 1,) one day in Jeyt. Is connected with prisoner

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\* Chundernath Roy.

No. 2,\* and the deceased Cassinath; the latter is his nephew

and the prosecutrix is his widow; went out in the morning according to custom; returned; passed Cassinath's khirky; saw Huram and witness No. 4, Prem Bagdee and witness No. 15, Calachand of Ruggoonathpore, villagers, some with rice bags, some with baskets. They asked if I had seen Cassinath. They said, Go see what has become of him, if he is asleep or what, get him up; we have come for seed to sow; entered the house, on the door of the *puckah* room, there was an open lock; entered; saw him apparently asleep. It was dark; told the others to open the doors, as he gives no answer; then saw his head nearly cut off, left them in charge; went into the village; first to Chundernath's, saw him coming in with his *lota* in hand; told him; he began to mourn, went with him to Cassinath's, saw what had been done; was much affected; others came and amongst them the village chowkeedar; information sent to the Police; jemadar came in quest and all the particulars as to condition of the body; room, &c. finding keys, *lotas*, the *chador* and the note in it, the bundle with flour, *suparies* and *pan*; the nature of the note; states further that Chundernath Roy and he, had eaten at the funeral feast. That for three generations disputes had been going on, as to their shares; that he had seen Gunesh prisoner No. 1. at Cassinath's the day before the murder when he told Chundernath, he remarked who could have done such a thing? when he saw Gunesh at Cassinath's, he asked who he was and was told in reply, that he was his sister Sunkery's former servant. Is an immediate neighbour of Cassinath; heard no disturbance on the night of the murder.

Callachand is in partnership with Chundernath and lives in the same house, with a common entrance. That had parties assembled in Chundernath's, Callachand must have known it. Is asked by the Court if he informed Callachand of the murder as well as Chundernath, replies no, as he resides at the Naga-danga Golah, two *coss* off, at intervals only coming to Chundernath's and that Calachand did not go to Cassinath at all, that day; members of his family, Preonath Roy a nephew eleven or twelve years of age, Ramkisto seven or eight years of age, and the widow of Thakoordoss live in Chundernath's. His house is *pucka* with a *pucka* wall all round. There is a house for worship *poojah bari*, also *pucka*, with a verandah *dalan*. Ladies' apartments are separate, the lads reside with them; that the distance of those apartments is about twenty *haths*, from the verandah of the *poojah bari*, and that if people made any noise they must be overheard. There was a petition preferred at

Barasot; can't say whether there was any quarrel, with the Gangooleys; Greeschunder Chuckerbutty gomasta of Calachand, lives in that house, with Chundernath Roy, informed him of the murder; accompanied him to the house of Cassinath.

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\* Suddanund Bagdeo.

† Tarachund Bagdeo.

Witnesses Nos. 2\* and 3,†  
depose to the same particulars  
as to the inquest, and No. 4, the

sub-assistant Surgeon to the examination of the body, the head merely hanging by the skin, and that the wound could not have been self-inflicted.

‡ Deegumber Chatterjea.

§ Ramchand Ghose.

|| Sheikh Yarally.

¶ Rofutollah.

\* Premchand Bagdeo.

No. 7,‡ } To the confession

„ 9,§ } and its particulars.

„ 11,|| } To ditto before the

„ 12,¶ } Magistrate.

„ 14,\* } To the subsisting en-  
mity between Chundernath and

the deceased and the recent dispute as to the wall; that he threatened to tie him to a post; kill him and make low caste people take him away to burial. To his going there early on the morning for seed rice, meeting

† Greeschunder Roy.

there witness No. 1,† and to the

subsequent discovery of the body.

No. 15.‡ To the inquest and  
particulars, discovery of the *cha-  
dur* and note, points out the  
different articles. No. 1,§ to the

‡ Kallachand Bagdeo.

§ Greeschunder Roy.

same facts.

|| Hurrinarain Roy.

¶ Sreenarain Roy.

No. 20.|| Swears to his note.

„ 21.¶ To having been en-  
trusted with its delivery to

Anund Mookerjea the addressee.

That being taken unwell he hired prisoner No. 1, Gunness Tewary to convey it; recognises the note.

*The defendant No. 1.*—Gunness Tewary examines no witness for defence.

*The defendant No. 2.*—Chundernath Roy examines witness No. 24, Hurrishchunder who deposes that he was staying the night with Chundernath Roy, prisoner No. 2; remained the night in the south room; Chundernath Roy, prisoner No. 2, in the next room. They had supper together at 10 p. m. played at dice with him; Greeschunder Chuckerbutty was there also; the women retired at midnight, saw Chundernath again during the night. Heard no noise; defendant is a very respectable man; of good family; is connected with the Nuddea Rajah; has been present when Chundernath prisoner No. 2, and Cassinath were together. Left next morning after smoking; Assigns as his reason for going there that particular night, his being a relation and that this is customary; called Chundernath, prisoner No. 2,

1857. who was asleep on the morning following, and left for his home, when he heard of the murder.

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\* Woomachurn Chatterjea.  
† Tarrunchunder Chatterjea.  
‡ Kallachand Roy.  
§ Essan Chunder Roy.  
|| Womeshchunder Mookerjea.

The other witnesses Nos. 25,\* 26,† 27,‡ 28§ and 36,|| speak generally to character and Kallachand No. 27, deposes to being a partner with Chundernath, prisoner No. 2, and that Cassinath

also was his consin. That his gomastah Greeschunder was in Chundernath's house, together with the other lads alluded to above. That in consequence of his gomastah informing him of the murder he came home that evening, speaks to character; that there was no deadly feud between the parties.

On the above facts, it is clear, that a very brutal murder with systematized premeditation has been committed and the only clue to which was obtained, from one of the gang inadvertently leaving his *chuddur*, behind in the *golah* and there being a note tied up in the corner of it, which led to the identification of the owner. The writer being traced, the party to whom the note was delivered for transmission was also traced and his confession recorded and repeated before the Magistrate. It is impossible to read that confession or that taken before the Magistrate without being satisfied that the deponent stated the truth in all material points, but as regards the prisoner No. 2,¶ what legal

proof exists?

The prosecutrix repeatedly stated that she entertained *no* suspicion against him.

The Darogah sends her in or rather to speak accurately, suggests to the Magistrate, to send for and examine her, and *then* she deposes to suspecting him and he is arrested, now I dislike this part of the case exceedingly, a confession follows and then the party implicates Chundernath Roy, prisoner No. 2. Having the recorded suspicion against the party, a confession implicating him is always more or less open to suspicion, especially when recorded behind the back of the party implicated. This is the second case, in which this Darogah has made the Magistrate the recorder of a statement he might have recorded himself, and has based his proceedings on orders arising in it. It has the appearance of a wish to stand clear of consequences. We see from the confession that Deenonath and Adheenath Gangoooley entertain this Gunesh Tewary to perpetrate the crime; they sent him to Cassinath's on this murderous commission; to inspect the premises and ascertain whether he is alone or not. There is no intervention of Chundernath prisoner No. 2, here; naturally, he would have gone to Chundernath; but he goes to Cassinath, and returns thence, without communicating with Chundernath prisoner No. 2, at all; every thing is arranged *there*

and a gang equal to the murderous undertaking meets Deenonath and Adheenath at the indigo-factory, from which they set out at 9 P. M. Now up to this point we have no indication of Chundernath, prisoner No. 2, being in the business at all. He now is introduced, two Bagdees *names unknown* are with him. Their names being unknown, causes additional suspicion, in favor of the prisoner No. 2, as to this confession. It comes at a late stage of the history. According to the confession before the Darogah, there was

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\* Passed in the *golah*, &c., when the mangoes were eaten and where the *suparies*, &c., were found. The premises having been inspected before the murder I make no doubt in my own mind, but that the gang assembled there and never went to Chundernath's at all. That was too exposed a place and if they had gone there, they would have eaten their mangoes and disposed of the betelnut and *pan* there, and certainly would not have taken a *chadur* full of mangoes, &c. &c., to Cassinath's, if they left Chundernath's intent upon the commission of the murder of Cassinath after they had finished smoking, &c. in the *dulan* or verandah of his *poojah bari*.

a considerable interval before\* the perpetration of the crime and the entrance within the deceased's premises. It is presumable, that the Gangoleys' party would have some assurance of the party to act with them, and it seems strange that they should neither know the names nor enquire of them their names, and associate themselves in an offence of this magnitude, without some knowledge of these parties. At a very late stage of the case, prisoner No. 2, Chundernath Roy is introduced into its

history. It is to be borne in mind that the first rendezvous was at the indigo-factory. I do not see the necessity of any rendezvous at the house of prisoner No. 2, Chundernath Roy. Again, there is the direct motive of the act, viz. to get at Musst. Sunkery's money, in the custody of Cassinath. In this, Chundernath had no privity of interest. What was it to him whether they, the Gangooleys, got the money or not. But they

† Gunesh Tewary.

with this *especial* object, deputed the prisoner No. 1,† to examine the premises; they got together a gang of ruffians and meet at the indigo-factory. Where is the necessity of associating prisoner No. 2, Chundernath in a murder, in which he has no particle of interest to gain? On the other side was money, supposed to be large in amount, the direct motive of murder from the commencement of crime. Prisoner No. 2, Chundernath, had his quarrels with the deceased, and is known to have threatened him. To threaten is one thing; to carry out a threat another, especially by a party, who knows, that by reason of these very threats, suspicion would rest upon him.

Threatened people proverbially live long. There is no legal proof against this prisoner, whatever there is in the way of suspicion against him, is very much stronger against the Gan-

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gooleys, Deenonath and Adheenath, in whom the murder began and ended in the payment of the blood-money to this prisoner No. 1, Gunesh, two days after the murder at Sreekishenpore. Why was not this paid by the prisoner No. 2, Chundernath? The murder begins with the Gangooleys and ends with them.

I have no doubt of the substantial truth of the confession of the prisoner as regards himself. His confession varies in my Court, where it was briefly recorded. He was indifferent to life. He seemed quite aware of the consequences. Before the Police he confessed at length; he pointed out to the Darogah each particular occurrence in connection with the murder and it has pleased Providence to lead to his detection in a very particular manner. The writer of the note is a person of high respectability and there is no Police fabrication of this salient point in the case.

I have acquitted Chundernath Roy, prisoner No. 2.

I see no circumstance to induce me to recommend to the Court a less sentence than death to be passed against the prisoner No. 1, Gunesh Tewary.

The following minutes were recorded by Messrs. Sconce and Torrens on the above proceedings.

*Mr. Sconce.*—The examinations taken in this case appear to be in one or two important points imperfect.

A clue to the arrest of the prisoner Gunesh Tewary, whose trial is now before us, was first obtained by the discovery of a *chadur* belonging to him, in a corner of which was found a letter written by Hureenarain Roy, which had been given to the prisoner to deliver.

The murder of Kasheenath Roy, was perpetrated on the night of the 25th May. But not till the 11th June, as appears from the Darogah's report of 12th June, was the *chadur* found. It had been found in what is called a *golah* in the deceased's premises.

Further, it appears that about the same time that the *chadur* was found, a bundle containing several brass vessels belonging to the deceased was found on a broken wall running between the deceased's premises and the premises of Chundernath Roy. The Darogah in his report of the 12th June, says that the vessels seemed to have been recently placed on the wall and that he thought the *chadur* had been in the *golah* some time before.

The *chadur* is described by the prosecutrix as being laid out as if it had been slept upon. Beside it, were found some mangoe stones; some *sooparie* and other things. But as the case now stands, the non-discovery of these articles, which of themselves tended to create suspicion and to furnish cause for enquiry, from the 26th May to the 11th June, is not accounted for. Was the *golah* in question not entered at all in the interval? Was no

search made there by Premchand and other parties immediately after the discovery of the murder? The prosecutrix, a servant Senboo Ghose, the witness Bhundool Bagdee, the thannah jemadar, the witness Premchand and others should be able to give information upon these points which it is desirable to record: and at the same time they or others should be able to give some information respecting the brass vessels which were found by the wall that separates Kasheenath's house from Chundernath's; and as to the suspicion expressed by the Darogah that the brass vessels, as well as the mangoe stones and other articles found with the *chadur* inside of the *golah*, had been *recently* brought (as if by the prosecutrix herself) to the places where they were discovered.

For the above reasons I think the proceedings should be returned to the Sessions Judge that the evidence now indicated may be recorded. When the evidence has been taken, the prisoner will be again called upon for any answer he may have to make.

*Mr. Torrens.*—I should agree to the return of this for the further investigation proposed by my colleague were it not that I consider it unnecessary, under the circumstances of the prisoner's confession fully admitting that he had conveyed the letter to the deceased from the witness Hureenarain, as deposed to by the latter. The further investigation proposed is all in respect to the discovery of this letter, but as Hureenarain's evidence bears out what is stated in the confession and as I conceive we cannot decide the case counter to that confession, I would proceed at once to the final orders on it on the record as it stands. Entertaining this view I think the preferable course will be to send the case for the opinion of a third Judge.

After an opinion by a third Judge the following letter was addressed to the Sessions Judge.

"The Court, having had before them your letter No. 278, of the 6th ultimo, referring the case of Gunesh Tewary, charged with dacoity, direct me to transmit to you the accompanying minute recorded by one of the presiding Judges on the trial, and to request that you will record the further evidence therein alluded to and resubmit the proceedings which are herewith returned, with as much expedition as possible."

The following *letter* No. 401, dated the 5th November, 1857, was written in reply to the above by the Sessions Judge.

I beg to annex a Memorandum of the further examination of parties in the case of Sreemutty Baroda Dabee *versus* Gunesh Tewaree, as to property found upon the broken wall belonging to Chundernath.

The prosecutrix states, that she went there to fetch leaves of the cocoanut palm to burn; that she saw the broken basket on

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the wall covering the *lotas* in question; she told her servant Surboo Ghose; he informed the Darogah. Passing by the *golah*, which is beyond the enclosure of her residence, she pushed open the door and saw the *chadur* in question and the *sooparies*, betel-nuts, &c. The deponent could not say whether the premises had been previously examined or not.

The Darogah, Doorgachurn Chuckerbutty, states, that on the pointing out of Surboo Ghose, he found the basket on the wall, at an elevation from the ground of from two and half cubits to three cubits. In the *golah*, which is beyond the enclosure of the residence of the deceased, he found the *chadur* spread out and a bundle of betel-nuts (*sooparies*), some wheat flour, some mangoe stones and skins. That within the *chadur* there was this particular note. That under the wall there were foot marks. The Darogah's impression was, that these *lotas* had been placed some three or four days previously. With reference to the articles in the *golah* from the appearance of the skins and stones of the mangoes, they had apparently been there some fifteen or sixteen days; the skins and stones being dried up. Further, that at the inquest, his proceedings were limited to an examination of the actual residence. That the *golah* was not examined previously. That the premises of defendants are examined, not those of parties who have been robbed; that in his report of the 12th June, the flour has been introduced erroneously with the mention of the *lotas*; that his meaning as to that report is, that whatever suspicion might attach to the things on the wall as recently placed there, his opinion as to the things in the *golah* was, that they had been there some time. These things were not on the wall, when Chundernath's house was searched on the 31st of May. The *golah* was not searched at all.

The jemadar's statement substantiates the same facts.

The statement of Surboo Ghose is, that eight days after the murder (25th May.) i. e. this will be the 2nd of June, he was appointed by Jogesur Mookerjea as a servant to protect the prosecutrix. One day he was cutting cocoanut leaves (the stalk is used as firewood) and the prosecutrix came dragging behind her another palm leaf, she told him what she had seen on the wall; he went and saw the things there; then the prosecutrix continued the examination and pushed open the *golah* and returned to him and told him what she had discovered. The Darogah being in the immediate neighbourhood he gave him information. To a question as to the omission to examine the *golah* previously, his answer is, what was the necessity?

Bundoli chowkeedar deposes to the non-examination of the premises; his evidence elicits nothing of any importance as throwing any light on the subject.

Premchand alludes to the previous evidence. He states

there was no examination of these particular premises at the inquest; two or three days subsequently these articles were discovered. This witness is a common cultivator and cannot estimate time.

Harrun Bagdee was not present at the inquest; there was no search of the *golahs* whilst the deponent was there; has no knowledge of any subsequent transactions.

Callachand Bagdee states that he went with the others on the morning next following the murder, to fetch rice seed, and asked Grees Roy to go in and see where he was, which led to the discovery of the murder. Deponent never went to the *golah* or broken wall, and has no knowledge of any of those matters. Was not present at the original inquest.

The defendant is asked whether he wishes to add any thing to his original defence. He says, he has nothing further to add to what he has already stated.

The murder took place on the 25th May. The house of Chundernath was searched on the 31st. The *lotas* were found on the wall on the 11th of June. They were not there on the 31st of May. How this was done, cannot possibly be stated, but their discovery set the prosecutrix to work to examine places which had not previously been examined. Pushing open the *golah*, she discovers the *chadur*, the betel-nuts, dried mangoe skins and stones and some wheat flour.

Within the former is this note, a note written on in different matters: from this a clue is obtained to the writer.

He at once admits the authorship and that he entrusted it for delivery to a certain party.

In this way, as already reported, we trace Gunesh. In that communication there is nothing involving any party of any description. Had this part of the scheme been concocted, it would have probably introduced some particular parties to our notice as having arranged directly or indirectly this murder. But there is a total absence of any thing of this sort. The writer of the note is of the highest respectability and the prosecutrix herself is connected very highly.

Then too, it would have scarcely occurred to ruin the ingenuity of the Bengal police, to associate, betel-nuts, dried mangoe stones and skins and flour. We should more probably have found some of the property with this *chadur*.

The prisoner has been invariably asked as to whether he had any question to put to the different witnesses.

Throughout this case but little attention has been paid to those articles on the wall.

The Darogah in his report of the 12th of June, hypothetically puts the case, if suspicion may attach to the articles upon the wall as recently placed there, this suspicion does not extend to the things in the *golah*, and the concluding words of the 5th

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paragraph of the Court's letter (not numbered) are inaccurate in this respect and this has been caused by the writer of the report putting the *flour* into the category of those articles found upon the wall.

I have extended the enquiry by citing the Darogah, as the party best able to throw some light upon this matter, but of a truth, with the exception of the clue we have obtained, and a most remarkable one it is, every thing else is darkness.

It must finally be noted that if the prisoner, Gunesh, had been induced in any way to place his life in jeopardy by a confession, the object of which was to secure the punishment of some second party, say the defendant acquitted, that motive no longer remains as any inducement to continue the acknowledgment of the commission of this cruel murder.

He adheres to his original confession.

I have finally in re-submitting the case to request the Court's attention to the unusual delay in the transmission of its orders to this Court.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sconce and J. S. Torrens.) On the morning of the 14th Jeit last (26th May,) Cassinath Roy was found in his house murdered. His head was nearly severed from the body. For several days no clue was found to trace the perpetration of the murder: but on the 13th June, in an empty out-house, called a *golah*, detached from the principal premises of the deceased, was found a *chadur*, in one corner of which was tied a Bengallee letter which led to the arrest of the prisoner Gunesh Tewary. The letter bore the signature of Hureenarain Roy, and on enquiry it appeared that Hureenarain had given the letter to one Sreenath to deliver to Anund Mookerjea, his gomashdah, and that Sreenath had made it over to the prisoner for that purpose. Hureenarain and Sreenath have been examined as witnesses at this trial.

Excepting the indirect evidence derivable from the discovery of the *chadur* and note, the only proof submitted at the trial of the prisoner's guilt are his confessions, taken first by the Police Darogah and secondly by the Joint-Magistrate. Before the Sessions Judge, the prisoner Gunesh adhered to his admission of his guilt. From the details given in the Sessions Judge's reference, which, it is unnecessary to repeat, it will be seen that the prisoner professes to have been associated with several other men in the commission of the murder, and that though he says that others and not himself actually perpetrated the deed, he accompanied them, knowing that the purpose was to murder Cassinath, and that he was present at the premises of Cassinath when he was murdered. We say nothing with respect to other persons whom, in his confessions, the prisoner denounced as the

instigators or actual perpetrators of the crime, while as to himself, prisoner in his confession to the Joint-Magistrate, distinctly stated that he had been told the project was to kill Cassinath and get his money, and that he went with the others for the purpose of accomplishing the murder. The prisoner adduced no witnesses at the trial. As if to extenuate his guilt, he said that when Cassinath was killed, he cried out, and that some one seized him, and told him to keep quiet, but we cannot come to any other conclusion than that he was a willing accomplice in this foul assassination. We convict the prisoner Gunesh Tewary, of being an accomplice in the wilful murder of Cassinath Roy and under the provisions of Section 4. Regulation VIII. of 1799, we sentence him to suffer death.

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PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

DOORGA CHURN DOSS ALIAS DOORGA DAS, DAK HURKARA (No. 1,) AND TARA GHOSANEE (No. 2.)

Nuddea.

CRIME CHARGED.—Charge 1st, 1st count, (No. 1,) breach of trust in embezzling the contents of two registered letters given to the prisoner to deliver, he being a Government delivery peon and at the time employed as Government servant; 2nd count, Nos. 1 and 2, theft of two notes value 150 Rs. from two registered letters.—Charge 2nd, 1st count, (No. 1,) breach of the Post Office Laws, the prisoner being a Government servant; 2nd count, No. 2, accomplice in the 2nd charge.

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CRIME ESTABLISHED.—(No. 1,) breach of trust in embezzling and theft of two Bank of Bengal Notes to the value of 150 Rupees being the contents of two registered letters given to him for delivery while employed as Government dāk peon in the Nuddea Post Office; No. 2, being an accomplice in the theft of two Bank of Bengal Notes to the value of 150 Rupees from two registered letters.

Prisoners convicted, the direct and circumstantial evidence against them being sufficient. Remarks on preparation of Comparative Statement.

Committing Officer.—Mr. A. J. Elliot, Magistrate of Nuddea. Tried before Mr. E. F. Radcliffe, Officiating Sessions Judge of Nuddea, on the 18th August, 1857.

Remarks by the *Officiating Sessions Judge*.—It appears that witness, No. 13, resident at Jessore, laid a complaint before the Magistrate of that district, that on the 25th June, 1856, he had forwarded two registered letters to the address of witness No. 8, resident of Gowari Kishnughur, each containing the halves of

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1857. three Bank of Bengal Notes, which for sake of reference, we will name alphabetically.

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No. 06221 for 100 A.

Case of

No. 03336 for 50 B.

DOORGA

No. 17909 for 10 C.

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and another.

It will appear hereafter on evidence that three other 100 Rupees Bank of Bengal Notes were posted from other districts which notes have not come to the addressee's hands, but only notes A and B form the grounds of charge. No. 1, as this case is somewhat complicated, I think it advisable to draw out a statement shewing the particulars of each note as per date of letter sent by post.

| Letter | Date.           | No.    | Value. | Where from. | Senders and Addressees. |
|--------|-----------------|--------|--------|-------------|-------------------------|
| E      | Unknown.        | 07,552 | 100    | Unknown.    |                         |
| F      | 22nd May, 1856. | 13,955 | 100    | Beerbhoom.  | W. No. 28, to"          |
| D      | 19th May, 1856. | 23,100 | 100    | Jessore,    | W. No. 22 to W. No. 24. |
| A      | 25th June, 1856 | 06,221 | 100    | Ditto.      | W. 13, to W. No. 8.     |
| B      | "               | 03,336 | 50     | Ditto.      | "                       |
| C      | "               | 17,909 | 10     | Ditto.      | "                       |

Witness No. 13 and witness No. 14, prove the fact of forwarding the three Bank of Bengal Notes A B and C in registered letters. Witness No. 4, proves the opening of the packets and receipt of the two registered letters to the address of witness No. 8, to the delivery of the same to prisoner, No. 1, in corroboration of which he filed No. 23, the registry dâk delivery book in which the name of the delivery dâk peon, prisoner No. 1, is inserted.

Witness No. 8, states that he received the two registered letters from prisoner No. 1, in the presence of witnesses Nos. 13 and 14, who prove the fact, and without opening them, gave the usual receipt to the prisoner No. 1; that after the departure of prisoner No. 1, witness No 8, in the presence of witnesses Nos. 10 and 11, opened the letters. Witnesses Nos. 8, 10 and 11, then bear witness to the following facts, viz. that the 100 Rupees Note A, is not in either of the letters, but in lieu thereof the right hand half of Note B and the left hand half of E altered to assimilate with D, that Note B is missing and Note C intact.

At this period, the case was in the hands of the Magistrate of Jessore; from his enquiries it appears that Nundcomar, witness No. 22, (absented in this Court) on the 19th May, 1856, forwarded from Jessore in a registered letter, to witness No. 24, the right hand half of Note D; witness No. 24 states that he received by the hand of a private servant the half of a Bank Note D, and he has filed that half before the Magistrate of

Jessore, the half being the left hand of D; on the receipt of one-half of D by his servant, he wrote to Nundcomar, witness No. 22, who forwarded him the other half of D by registered letter as above noted, this registered letter is proved by witnesses Nos. 24, 25, 26 and 27, to have been forwarded from Jessore and delivered by prisoner No. 1; witness No. 24 seems to have acted in exactly a similar manner as witness No. 8, in i. e. the granting a receipt to prisoner No. 1. On opening the letter, the above witnesses prove that instead of receiving the right hand half of Bank of Bengal Note D, he receives the right hand half of F altered to suit the right hand half of E.

This led to the enquiry into letters F and E. Witness No. 28½ is the servant of witness No. 28, (who was prevented by illness from attendance in this Court, though his evidence on oath was taken by the Magistrate of Beerbhoom) and states that Note F as forwarded by his master, on the 22nd May, 1856, from Beerbhoom in an ordinary letter to the address of witness No. 29, whose evidence is corroboratory and that the same was never received.

Enquiry was made into Note E. to discover its answer, it was traced as far as Chundernagore, where it was stated to have been lost.

Witness No. 5, declares that he saw prisoner No. 1, on or about the date of the loss of Notes, A and B, enter the house of prisoner No. 2, with some letters with green covers, and suspecting him, he went to the open window and saw prisoner No. 1, in the presence of prisoner No. 2, (who was sitting by him) with an open letter in his hand and two Bank Notes lying on the ground and placing what appeared to be a Bank Note inside the letter; that on the prisoner's seeing him, they entreated him not to inform against them, and this he refrained from doing until he heard that the Post Master was making enquiries; witnesses Nos. 6 and 7, state that prisoner No. 1, brought them a Note, requesting it to be cashed, but that seeing it was an erased note, they declined doing so.

By the evidence of witness No. 1, it appears that he was the spiritual guide of prisoner No. 2; that on that and other accounts she owed him 5 Rs.; that after repeated promises to pay she eventually, when he was on the point of going to Nobodeep village, took him to Mookta's house, where prisoner No. 1, was sitting. She showed him a 100 Rupees Bank note (which will be hereafter proved to be A.) and which she desired him to get changed, deduct the balance due to himself and return the rest, being unwilling to cash the note a man named *Greedhur* is sent with him to get it cashed, pay the witness and bring back the change; that they both proceeded to the house of Mookta Bewah at Nobodeep who deputed witness No. 17, (and whose evidence is confirmatory) to take them to the house of a Podar, where

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1857.      the note in question was cashed, the debt paid and the balance made over to prisoners Nos. 1 and 2.  
 November 18.      This witness has no knowledge of the number of Bank Notes he got cashed.  
     Case of DOORGA      Witness No. 18 states that he received, on the above occasion, Note A as stated by witnesses Nos. 1 and 17.  
 CHURN DOSS      It was not deemed necessary to call for the evidence of every  
*alias* DOORGA      person through whose hands these Notes passed. Suffice it to  
 DOSS, DAK      say the Note A was traced from the Bank of Bengal to Kisto-  
 HURKARA      bullubh Pramanick of Santipore and so on to prisoners Nos. 1  
 and another.      and 2. Witnesses Nos. 2 and 3, prove that prisoner No. 2, came  
                                  and purchased some cloth valued at Rs. 4-12; that in payment  
                                  thereof, she gave Bank of Bengal Note B, and received the balance  
                                  Rs. 45-4; that the Note was sold on the 6th Bhadro, 1263, to  
                                  Nobin Pramanick, which fact is confirmed by the production of  
                                  the *Khata Bhae* No. 20. This Note was similarly to A traced  
                                  from the Bank of Bengal to witnesses Nos. 2 and 3, and thence  
                                  to prisoner No. 2.

Witness No. 4, in his evidence, shows the manner in which his suspicions were first excited against the prisoner No. 1, who was his Dak Hurkara; that, in consequence thereof, the houses of prisoners Nos. 1 and 2, were searched by the police on the 14th December, 1856. Witnesses Nos. 30, 31 and 33, prove thirteen letters and a cover were found in their houses, witnesses Nos. 34, 36, 37 and 38, attest the letters found in the houses of both prisoners as addressed to them.

The prisoners deny the charge and prisoner No. 1, in his defence, admits the fact of his being a Dawk peon; that he was directed to deliver immediately the letter addressed to witness No. 8, but not finding him at the kucherree, witness No. 8, being a Mooktyar he took them at 5 P. M. to his house; that witness No. 8, then gave him a receipt for the letters and on the following day he heard that a complaint had been instituted regarding these two letters. He makes a similar defence regarding the registered letter containing the Bengal Bank Note D, but it must be remembered that D does not form part of the charge, though connected with the proof, he also states that he received instructions from the Deputy Post Master to retain all letters which had been "post paid" and to return those that were "bearing" when the addressees were not found. In his defence he produces the register book, No. 23, Post Office receipt book No. 39, and register receipt, No. 40; prisoner No. 2, states that the ornaments, money, &c., found in her house have been obtained in trade in milk and butter; that the *chaprass* found in her house belongs to prisoner No. 1; that no letters were found in her house, and that witness No. 1, accuses her to screen himself. She calls evidence to prove that she has obtained her jewels, &c. honestly.

This case was tried with the assistance of the Law Officer, who convicts prisoner No. 1, under the 1st and 2nd counts of the 1st charge, and on the 1st count of the 2nd charge, and prisoner No. 1, as accomplice in the 2nd count of the 1st charge. He acquits prisoners Nos. 1 and 2, on the 2nd count, of the 2nd charge and under all the circumstances of the case, I concur in the verdict.

By the tabular statement given above, it will be noticed that notes, F and D, were posted in the months of March and May, 1856, whereas notes, A and B, were posted in June of the same year. The date of posting of E is unknown; but it is certain that it must have been posted before A and B, as Note F has been altered to suit Note E; it will also be remarked that all these Notes have arrived in Kishnaghur by Post from different districts, and therefore there is no doubt that the frauds have occurred in the Nuddea Post Office; there is nothing on the evidence to lay criminality at the door of any other parties but the prisoners; evidence has been given that the Notes A and B, were forwarded from Jessore in two registered letters and not received; that those two notes have been traced from the Bank of Bengal (where payment of the notes was stopped) to the hands of both prisoners; it has also been proved that prisoner No. 1, attempted to change an erased Note in the Kishnaghur bazar and further that the right hand half of D, was forwarded from Jessore and never delivered, but in lieu thereof the right hand of F, altered to E, but it has been proved that the right hand half of D, was substituted for the right hand half of A, and the left hand half of E, for the left hand half of A, the number of E, being altered to suit the number of D.

The alterations made in these Notes are most clumsy, evidently the work of an ignorant person.

It has been further proved that the Note F was forwarded from Beerbhoom to Kishnaghur and also its non-receipt by the addressee.

It is quite incredible to suppose that two men in the position of witnesses Nos. 8 and 13, who are known to be men of substance and mutual correspondents on money-matters, should of themselves to serve no earthly purpose, the one found to the other, two registered letters containing destroyed or forged Bank Notes, and that the receiver thereof should have brought the matter before the authorities; the only inference to be drawn is, that the Notes must have changed, and then when we see parts of other Notes (which are shown to have come through the Nuddea Post Office) are found in those two registered letters, the natural inference is, that there must have occurred fraud in the Post Office.

On looking for this fraud, it is discovered that the delivery peon is prisoner No. 1, who cohabits with prisoner No. 2, has in

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1857. his own house and in that of his mistress a number of Post Office letters undelivered, among which, some are dated three and four months previous to the date of search. Amongst them is found a cover without contents addressed to some stranger.

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We next find prisoner No. 1, endeavouring to pass a Note whose number has been altered, (it will be noted that a similar Note was exchanged for the Note A, in the two registered letters) we next trace the Notes A and B, to the hands of the two prisoners. It is in proof that the registered letters forwarding A and B, were delivered by prisoner No. 1, and by the evidence of witness No. 4, the Deputy Post Master, it is shown that the letters were given to him for delivery at 3 P. M., whereas the prisoner says he did not receive them till half-past 4 P. M. and delivered them at 5 P. M. This defence of the prisoner is evidently false. Taking into consideration the distance of the various kutcheries from each other and that of witness No. 8's house from the kutcheries, it would have been physically impossible for him to have delivered the letters in half an hour, and this statement likewise differs from his defence before the Magistrate.

The prisoners Nos. 1 and 2, have been proved to have been seen engaging in the changing of the contents of letters.

The statement of prisoner No. 1, that he had received the orders of the Deputy Post Master to keep all stamped letters is ignored by that officer and is in fact contrary to the Post Office laws, and not probable to have been the case.

It is therefore clearly established that from two registered letters to the address of witness No. 8, the Note A was extracted and two other halves of Bank Notes differing in number placed in exchange; that the Note B, was extracted, and both A and B applied by the prisoners to their own use. The fact also of parts of the Notes, D and F, being substituted by the prisoner, No. 1, is consequently clear, and therefore it is evident he must have been in the habit of systematically opening letters and stealing their contents. The alteration of the number of the Note F to that of Note E similarly leads to the conclusion that the Note E (which has not been traced) has likewise been abstracted by prisoner No. 1.

Taking into consideration therefore the deliberation with which this embezzlement and theft has been contrived and the fact of prisoner No. 2, being the concubine and participator in the proved theft of prisoner No. 1, the circumstance of the breach of the Post Office laws being clearly proved against prisoner No. 1, and the fact of the evidence for the defence having entirely failed, the prisoner No. 1, has been sentenced to seven years' imprisonment with labor in irons and prisoner No. 2, to three years with labor suitable to her sex, and the Magistrate is directed to hold in deposit under the provisions of Act XVI. of

1850, the sum of 100 Rs. so that in the event of its being established through that officer that any parties have been sufferers through the frauds so fully proved to have been practised by the prisoners.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The prisoners urge no specific grounds of appeal; but pray a reference to the record.

The following facts are clearly and connectedly proved, viz. that two Bank of Bengal Notes No. 00201, for Rs. 100, and No. 03336, for Rs. 50, were sent in two registered letters by witness No. 13, at Jessore to witness No. 8, at Gwarri, and duly advised; that the registered letters arrived at the Nuddea Post Office, and were given to prisoner No. 1, by witness No. 4, the Deputy Post Master, to deliver to the addressee, witness No. 8; that the said letters were delivered to witness No. 8, by prisoner No. 1, and a receipt given for them; that witness No. 8, on opening the letters found the No. of the half of the 100 Rs. Note to be 23,100, instead of that advised; that the part where the No. is engraved was erased; that no Note for 50 Rs. was in either of the letters; that the Note No. 23100 for 100 Rs. was sent by witness No. 22 to witness No. 24 in an entirely independent transaction; that the witness No. 24, received one half of it erased in the No.; that prisoner No. 2, being a debtor of witness No. 1, on being dunned for payment of her debt, took witness No. 1, to the house of one Mookta where prisoner No. 1, was, and there gave witness No. 1, a Note for 100 Rs. to change; that it was changed for witness No. 1, by witness No. 18; that this was the note for Rs. 100, No. 00201 sent from Jessore by witness No. 13 to witness No. 8; that prisoner No. 2, changed the Note No. 03336 for Rs. 50, with witnesses Nos. 2 and 3, in payment of a small purchase of cloth; that 13 undelivered letters were found with prisoner No. 1, and two letters addressed to other parties with prisoner No. 2; that prisoner No. 1, is the paramour of prisoner No. 2; and that his badge was found with her.

The prisoners substantiate no defence affecting the correctness of the conviction. Prisoner No. 1, relies on the receipt he holds of the two registered letters. Prisoner No. 2 relies on the witnesses she calls who depose to her many ornaments and cash being her own, and that she is well to do as a prostitute and milk-seller.

I see no reason to interfere with the conviction or sentence, and I reject the appeals.

The last columns of the Comparative Statements are left quite blank. They should have been duly filled up.

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and another.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

## GOVERNMENT

*versus*

Nuddea.

SUNJOO FUKER.

1857.

CRIME CHARGED.—Assault with personal injury to witness

November 19.

No. 1.

Committing Officer.—Mr. F. R. Cockerell, Magistrate of

Case of

SUNJOO

FUKER.

Nuddea.

Tried before Mr. R. M. Skinner, Sessions Judge of Nuddea, on the 22nd October, 1857.

Prisoner convicted of causing destruction of the eye-sight of his wife, by insertion of his fingers into her eyes. Sentenced to sixteen years' imprisonment with labor and irons. Remarks on Sec. 6, Regulation IV. of 1822, and on Sec. 15, Act II. of 1855.

*Remarks by the Sessions Judge.*—On 26th August, 1857, Bhadoo Mussulmance, witness No. 1, a girl about twelve years old, appeared in company with her mother, witness No. 10, at Katoolee Factory where the Assistant Magistrate of Shikarpore was. The prisoner was also brought there by Noteeb Sheikh. The Darogah of Dewangunge was directed to enquire and report. The girl then declared that on the evening of the 24th idem, her husband, Sunjoo Fukeer, took her from his house at Pepul-khola, on the pretext of going to Anundea. On the way he attempted to have connexion with her under a tree on some waste land; but she being very young, protested: he then bit her left cheek, tied both her hands with cloth, and bit her thumb; he then tightened a cloth round her neck; and pressed, his fingers into both her eyes and blinded her. Early next morning he covered her head with a sheet and led her by the hand. They met two persons, who, observing that she was weak, uncovered her face and saw the state of her eyes; and she told them what her husband had done. They released her from him, and directed a woman whom they met, to take her to her mother at Kootubpore.

Her mother took care of her that night: but her eyes were so swelled that she the next day took her to Katoolee factory, she gave the like account before the Joint-Magistrate of Kurreempore. Her deposition before me is to the like effect.

The prisoner on being questioned averred that the day before (25th August, 1857,) he was leading her to Anundea to his brother, as her eyes had been inflamed for twenty days. They were met in the village of Morrihea by two peons who beat him and told some women to take her to her mother, he ran off to his brothers Abid and Shabid at Anundea. Noteeb Sheikh seized him and took him to the Darogah at the *pharce*. His defence before the Joint-Magistrate differs from that given at the

thannah and is not supported by any evidence. Here he has no defence to offer.

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The Darogah seeing the state of Bhadoo's eyes sent her to the assistant, who forwarded her to the Sudder Station.

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The girl's account is corroborated by evidence. It is clear from the testimony of three witnesses\* that before the 24th August there was nothing the matter with her eyes. Ramlall

\* No. 4, Jonab Khan,  
,, 5, Dunjoo Khan,  
,, 6, Jungoo Khan.  
Singh No. 7, and Laul Sheikh No. 8, testify that they met her early on the following morning in the manner she describes; that the prisoner ran off; and that they made her over to Motec Mussulmanee, witness No. 9, who also saw the state of the girl's eyes and took her to her mother, witness No. 10.

The report of the late Civil Assistant Surgeon, Dr. Palmer, dated 2nd September, shews that the right eye then bore the appearance of having been burst by some mechanical injury; and that the effect might have been produced by a finger being thrust in. On the 14th idem he reported that her life was in danger. The present incumbent, Dr. Halls, deposes that the girl's sight is entirely destroyed and that her blindness arose from inflammation probably caused by the insertion of fingers into the orbits.

The jury pronounce the prisoner guilty of the crime charged viz. assault with personal injury.

In this I concur; but as the outrage was most brutal, I would recommend that Sunjoo Fukeer be sentenced to perpetual imprisonment with labor in irons.

P. S. I have requested the Magistrate to inform the Joint-Magistrate of Kurreempore that under the Court's Circular Order, No. 42, dated 27th March, 1840, he should have taken the evidence of Dr. Palmer.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The prisoner's defence is that his wife's blindness was caused by disease of the eyes. This is in no way proved.

The statement of the wife, witness No. 1, is clear; and is corroborated by the deposition of the Civil Surgeon taken at the Sessions, and by the witnesses Nos. 2, 3, 4, 5, 6, 7, 8, 9 and 10. The *intent* to destroy the sight is the point on which the question of the measure of punishment must, in the first instance, depend.

The Sessions Judge recommends perpetual imprisonment in this case.

The case in page 427, Vol. II. of the Nizamut Adawlut Reports shews that the Nizamut Adawlut sentenced a prisoner to fourteen years' imprisonment when the eyes of a wife were put out by a husband with a hot iron, and in that case the instrument used, and the result, "the pupils of both eyes having

1857. been totally destroyed," afforded together the strongest proof of the direct intent to destroy sight. The report of the case, November 19. however, shews that "the second Judge was not without some leaning to thinking prisoner a fit object for a sentence of perpetual imprisonment."

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In this case, the fingers were used; immediate blindness followed; inflammation actually destroyed the sight, that inflammation having arisen from such use of the fingers. Thus the act here may perhaps be said not to be so deliberate and the result so immediate and certain as where such a thing as a hot iron is used.

The wife in this case deposes that the cause of prisoner thus injuring her, was her refusing to allow him connection with her on account of her youth, (twelve years.) In the case cited, it was that the wife had left her husband's home for that of her parents owing to his beating her. In this case it is deposed by the wife that she escaped to a tree after the husband at first wished to have connection with her; and to the Magistrate she states that on the prisoner seizing her the second time, and trying to put out her eyes, she offered to let him have connection, if he would not injure her sight, but he persisted in doing so.

After a careful consideration of the case, and especially with reference to the too prevalent practice of young wives being maltreated by husbands for refusing marital connexion at an early age, to the fact that prisoner had time for reflection, and still persisted in the cruel act, a severe punishment is proper. Section 6, Regulation IV. of 1822, allows this Court, in cases referred on account of the Sessions Judge considering the punishment of seven years' imprisonment which he is competent to pass inadequate, to "pass sentence of imprisonment, for such *limited* period of time, as under all the circumstances of the case may be equitable and just." I therefore sentence the prisoner Sunjoo to imprisonment for 16 (sixteen) years with labor and irons in banishment.

The Magistrate should have recorded that the statement of witness No. 1, had been taken under Section 15, Act II. of 1855, and the Sessions Judge that she had been examined as to knowing the obligation of a solemn declaration.

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PRESENT:

H. V. BAYLEY, Esq., *Officiating Judge*.

GOVERNMENT AND ANOTHER

*versus*

BHUTTOO GOUREE (No. 2,) AND GOBIND MISTREE Moorsheda-  
(No. 3.) bad.

CRIME CHARGED.—Going forth with a gang with intent to commit dacoity. 1857.

Committing Officer.—Mr. W. C. Spencer, Officiating Magistrate of Moorshedabad. November 20.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 22nd October, 1857.

*Remarks by the Officiating Sessions Judge.*—On the morning of the 16th September last, the Darogah reported that Nursing chowkeedar of Sadok Bag, had just brought up the two prisoners above named, and stated that the previous night he had seen ten or twelve men in a lane, who, on observing him, had fled but that he succeeded in capturing the prisoner No. 2, who confessed to having been about to commit a dacoity and named amongst ten or twelve others, the prisoner No. 3, whom he at once apprehended. The Darogah further reported that they both confessed and that he therefore sent them both in to the Magistrate. The prisoners, on reaching the Magistrate the next day (the 17th idem), again confessed and the case was accordingly committed for trial. The Magistrate inserted in his calendar a charge of “attempt at dacoity” but as the only alleged overt act was the throwing of some bricks at a house and the confessions asserted that throwing was for the purpose of ascertaining whether the people of the house were on the alert, I directed the Magistrate to alter the charge into one of “going forth with a gang with intent to commit dacoity,” and as by the Nizamut Adawlut Reports, volume VI. page 52, in the case of Government *versus* Sangram Mundul, &c., it was decided that a *futwa* of the Law Officer was required on the trial of such a charge, I tried the case with the assistance of that officer, and as he differs with me as to the guilt of the prisoners, I am obliged to refer it for the orders of the superior Court.

The Court will observe that the case against the prisoners, rests solely on the credibility that can be placed upon the truth of their alleged confessions and I can place no confidence whatever upon them.

The house of the prisoner No. 2, is close to where he was seized, twenty yards distant as certified by witness No. 1, Nursing chowkeedar, who also said that the Nizamut cutcherry,

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Prisoners acquitted; their confessions not being corroborated by any trustworthy evidence, or by the circumstances of the case.

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where the witness No. 2, Gooroodyal burkundaz was, was about two hundred yards off only, and yet on his calling out and Gooroodyal coming to his assistance, instead of carrying the prisoner to the cutcherry, they took him to the Ranee Tirpoora Soondoree's house (against which it is alleged the bricks were thrown) and there on being questioned that prisoner is said to have confessed; on which Gooroodyal called up Bhubanee, the servant of the Ranee, and made him write down the list of names mentioned by the prisoner; by Bhubanee's evidence (whom I called up as a witness) it appears that he did not see the prisoner at that time, but some one who, Gooroodyal said was the prisoner, named from outside the house certain names, and he wrote them down inside the house on a piece of paper;

\* Page 9, of record. this paper\* was given to the

Darogah the next morning by Gooroodyal, and is with the Darogah's *khatima* report of the

† Page 9. 17th idem† and contains the name of ten persons which, with

the confessing prisoner, makes eleven men; in his subsequent confession before the Darogah the names of these parties are again written and with one exception in the exact order they are written in the first paper as if the confession had been copied from the paper, while in the next day's foudarry confession, the same prisoner only names nine persons and says he saw only nine persons, leaving out the names of Surroop Haree and Gupee Haree; in his mofussil confession too he stated that the men had all collected and the consultation for the dacoity took place in his house, while in his foudarry one the next day he said they assembled in Kalee's house and that he was forced to go with them; Gooroodyal burkundaz, in his deposition also acknowledges that on first capturing this prisoner, he denied having done anything, and it was not till he threatened him with sending him to the thannah and ordered the chowkeedar to take him there that he extorted the alleged confession; this burkundaz accompanied the prisoner to the thannah, and though there were six or seven other burkundazes there, yet the prisoners were sent to the Sudder Station in charge of that very Gooroodyal (vide *chellan†*) and of course the confession first extorted by threats,

† Page 5, of record.

was repeated in a way in the foudarry Court, the prisoner being all along under the same influence. The prisoner asserts that his confession was extorted by beating and ill treatment and I believe him.

The prisoner No. 3, was said to have been named by No. 2, and the chowkeedar (Nursing) was sent by the burkundaz (Gooroodyal) to seize him, although the same parties took no steps whatever to search for or apprehend the other persons named; he was found in the house of his mistress, and although

the chowkeedar and burkundaz had so closely questioned and obtained a confession from the prisoner No. 2, yet strange to say they declare they did not question the prisoner No. 3 at all, but took them both at dawn of morning to the Darogah; the Darogah's first report gives the impression that the prisoners both at once confessed, whereas the truth is, as was disclosed by the witness No. 6, Kasheenath, and corroborated by the fact of that witness being the only one amongst those that witnessed the confession of prisoner No. 2, who also witnessed that of No. 3; that after the confession of prisoner No. 2 was finished, all the witnesses were allowed to go away and four hours afterwards the burkundazes were again sent for the witnesses, and Kasheenath, thus a second time brought forward, witnessed with witness, No. 9, Chobeelall, the confession of prisoner No. 3, and yet the Darogah in the statement at the head of the two confessions declares that that of prisoner No. 2, was taken at "*four dundo bela*" and that No. 3, at "*six dundo bela*" and this *six dundo* has been written after the real time had been erased from the paper as inspection will show, he moreover gives no reason for the change in the witnesses to the two confessions and also forged the name of Bidessee, witness No. 10, as a witness to the confession of prisoner, No. 3, when by that Bidessee and by Kasheenath's deposition it is proved that Bidessee was not present at that prisoner's confession and it was after the commencement of the confession of prisoner No. 2, that Bidessee appeared to witness it. All these circumstances throw such suspicion upon the proceedings before the Darogah, that the confession taken before him and subsequently repeated before the foudary Court, after the prisoner (No. 2,) had been subjected, by being brought to the Sudder Station by Gooroodyal burkundaz, to the same influence which extorted his confession in the mofussil, I cannot credit. The prisoner No. 3, states that his confession was extorted by ill-treatment and I believe him, especially as no cause is given for the delay of four hours in taking his confession and the influence brought upon him during that time may easily be imagined, and I also remark that he names one Prema Haree as his associate, who is not named by prisoner No. 2. The witnesses also for the prisoner No. 3, all give him a good character. I am of opinion therefore that even if there really had been any gathering of men to commit a dacoity upon the Rance's house, which is not, however, satisfactorily proved, yet there is no proof that these prisoners were with them and no proof of the truth of their alleged confessions, and that these confessions were extorted by improper means, and I therefore recommend that the prisoners No. 2, Bhutto, and No. 3, Gobindo be released.

The Law Officer convicts the prisoners of the crime charged by their confessions, but for the above remarks, I think his

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1857. decision is erroneous. The conduct of the Darogah will be reported to the Magistrate, and that officer has been directed to release the prisoners on bail, but reports that they have been unable to furnish any.

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*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The Sessions Judge distrusts the confessions of the prisoners. Except these confessions there is no evidence which would sustain a conviction. Those confessions were made before the Police, and repeated before the Pundit as Assistant Magistrate.

The Law Officer gives no specific reasons for his opinion in favor of conviction, except that the prisoners have confessed.

The grounds for distrusting the confessions are of *two* classes; *firstly*, defect in their attestation before the Police. *Secondly*, great inconsistency and improbabilities in the confessions themselves, and in the statement on oath of Bhowany Persad, and in the evidence of witnesses Nos. 1, 2, 3 and 4, the captors of the prisoners.

On the *first* point, witnesses Nos. 6 and 9, and witness No. 10 depose that the said witness No. 10, was not present at the confession of prisoner No. 3. The first report of the Darogah clearly implies that the confessions were immediate and simultaneous. But the record and the evidence of witness No. 6, shew that they were not. Bidessee, witness No. 10, deposes he did not come to the spot where the confession of witness No. 2, was being written till it had been partly written: yet his name appears as a duly constituted witness; i. e. one present all the time.

I also observe that witness No. 2, Goordyal Singh, was the Burkundaz in whose charge the prisoners were sent into the Foujdary Court, i. e. one whose obvious and strong interest it was that the confessions he deposed to should be repeated before the Foujdary Court. I have to observe for the Magistrate's guidance that in a case like this where the tenor of the report suggested the necessity of care, the duty of taking confessions of this nature should have been performed by the Magistrate himself, and not by the Pundit.

On the *second* point. The confessions are glaringly inconsistent and unreasonable as to the cause which brought the other dacoits to ask prisoners to go; as to their connection with them; as to their going both days or only the last day to test the vigilance of the inmates of the house by throwing bricks; as to the dispersion of the rest of the dacoits; as to their arms and torches; and similar incidents, which, if prisoners were with a party about to commit dacoity, most probably would have been consistently narrated, or the inconsistencies explained. Further Bhowanee says that he wrote the names of the accomplices, and that he heard their names only from the captors of the prisoners; but that he never saw the prisoners when he wrote the names of the

accomplices. Further the houses of both were close to that of Ranees the party alleged to have been about to be attacked. Lastly, no details of any allotment of men or other arrangements usually preliminary to a dacoity, appear either in the confessions or in the evidence of the captors, while the evidence for the defence refutes all ideas of previous or probable connection with dacoits, as to be derived from character. No neighbours in the village, but witness No. 4 in the foudary, give evidence to support the story of the captors.

I concur in the acquittal proposed by the Sessions Judge, and direct the immediate release of the prisoners.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

DEELOO SHEIKH.

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Moorshedabad.

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Case of  
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Prisoner  
convicted  
under Act  
XXIV. of  
1843. Re-  
marks on evi-  
dence required  
to be furnish-  
ed at the  
Sessions trial.

CRIME CHARGED.—1st count, dacoity on the night of 13th February, 1844, corresponding with 2nd Falgoun, 1250, in the house of Ramcoomar Dutt, of Goodye thannah Raneetolah, zillah Moorshedabad; 2nd count, dacoity on the night of 9th November, 1852, corresponding with 25th Kartick, 1259, B. S. in the house of Teencowrie Mundul of Kamalchuch, thannah Raneetolah, zillah Moorshedabad; 3rd count,\* dacoity on the night of 4th December, 1855, corresponding with 19th Augrahan, 1262, B. S. in the house of Ramchunder Doss, of Romnah thannah Doultabad, zillah Moorshedabad. 4th count,\* dacoity on the night of 6th October, 1855, corresponding with 21st Ashin, 1262, in the house of Adyet Mundul of Kanchunagore, thannah Akhraranshye, zillah Moorshedabad; 5th count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Obhoychurn Bose, Deputy Magistrate under the Commissioner for the suppression of dacoity, Moorshedabad.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 20th October, 1857.

*Remarks by the Officiating Sessions Judge*—2. The prisoner was implicated in the confession of one Mohabut Sheikh who confessed before the Deputy Magistrate on the 13th and 14th January last, and was tried by me, and convicted by the Niza-

\* The occurrence of these two cases has been proved in the case of Kookra, prisoner No. 7, of Caledar No. 7, for March, 1857.

1857. mut Adawlut of dacoity and having belonged to a gang of dacoits on the 29th May, 1857, and who has since been transported for life, and whose evidence is therefore not available before this Court.

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3. This prisoner appeared before the Deputy Magistrate on the 4th July last, and at first denied his guilt, but a few hours afterwards he confessed to no less than seven dacoities and to having belonged to a gang of dacoits.

4. The witness No. 1, Dinoo Hajra proves that a dacoity occurred in the house of Ramcoomar Dutt, of Goodye. The record shews that this dacoity occurred on the night of the 13th February, 1844.

5. The prisoner confessed to having committed this dacoity, and said it occurred about thirteen years ago, was in the house of a Tantee who was deceased, and whose widow lived in it, that they opened the *khirkee* door, cut at the door on the east, that two women escaped and that amongst the dacoits were Noshoo, Gopal Roy, and Hous Mundul and that Noshoo got twelve years' imprisonment. These facts are all confirmed by the record, viz. that the dacoity occurred thirteen years ago, that the owner of the house was dead, that the dacoits entered by the *khirkee* door, and cut at the eastern one, and that two women escaped. The record further shews that one Hurree was seized by the police and in his confession of the 19th February, 1844, he implicated this prisoner and the above Gopal and Hous Mundul, also that one Gooroo Roy confessed on the 22nd idem, and implicated this prisoner, Noshoo, and Gopal, and also that Noshoo confessed before the Magistrate on the 21st idem, and implicated that same Gopal, and finally the copy of the Sessions orders dated 29th June, 1844, shew that Noshoo was sentenced to twelve years' imprisonment.

6. The witness No. 2, proves that a dacoity did occur in the house of Teencowrie Mundul, a Koibutto, and the record shews that this dacoity occurred on the night of the 9th November, 1852.

7. The prisoner confessed to having committed this dacoity and his statement is corroborated by the record, which shews that the dacoits got over the wall and that they stole a quantity of *koras*, and that the dacoits at the same time committed a dacoity in the neighbouring house of Bawool Mundul, and that about sixty dacoits were engaged.

8. The witnesses Nos. 3 and 4, prove that the prisoner's confessions were made freely and voluntarily, and the prisoner pleads guilty before me. I therefore convict him of having committed the two dacoities noted in the 1st and 2nd counts of the Calendar, and of having belonged to a gang of dacoits, and recommend that he be sentenced to imprisonment for life in transportation beyond sea for life.

9. I have not entered upon the 3rd and 4th counts, as no witness to prove the dacoities named in them has been sent up by the committing Officer, and I consider that the fact of their having been lately proved as stated in a note at the foot of the Calendar, is insufficient, as it is necessary to prove any dacoity charged in the presence of the prisoner charged with having committed it, and if there was no necessity for proving before this prisoner the dacoities noted in those counts, there was equally no necessity for the Deputy Magistrate sending up witness No. 1, to prove the dacoity of the 1st count, as that dacoity was proved before the Sessions Court also in 1844.

10. This case was tried under Act XXIV. of 1843.

P. S. I am of opinion that no collusion was possible between the approver and the prisoner, or the omlah and the prisoner, as the approver named the prisoner on the 13th January, and was not present at this station when the prisoner was summoned on the 1st July, or when he appeared on the 4th idem, and the records of the dacoities in the 1st and 2nd counts were only traced from the prisoner's confession.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The prisoner's confessions to the Deputy Magistrate and Sessions Judge are corroborated by the testimony of the witnesses Nos. 1 and 2, on the 1st and 2nd counts, and also in the manner stated in para. 5 of the letter of the Sessions Judge. I see no reason to distrust them, and convict the prisoner under Act XXIV. of 1843, and sentence him under the same Act to be transported for life with labor.

I concur in the remarks of the Sessions Judge in para. 9 of his letter. Where there is a judicial record only, to support the charge, that fact should be distinctly stated in the *Abstract of the examination*, i. e. in Col. 13th of the Calendar. A copy of that para. should be sent by the Sessions Judge to the Commissioner for the suppression of Dacoity for the proper guidance of that office, and those of the Assistants and Deputy Magistrates subordinate to it.

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DEELOO  
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## PRESENT :

A. SCONCE, Esq. *Judge*, AND  
H. V. BAYLEY, Esq., *Officiating Judge*.

## GOVERNMENT AND KALACHAND SURMA

*versus*

HALALLEE KASSID.

Dinagapore.

1857.

CRIME CHARGED.—Wilful murder of Pranbullub Chokra.

November 21.

Committing Officer.—Mr. E. Drummond, Officiating Magistrate of Dinagapore.

Case of  
HALALLEE  
KASSID.

Tried before Mr. J. Grant, Sessions Judge of Dinagapore, on the 18th August, 1857.

Prisoner  
acquitted; the  
evidence being  
insufficient,  
and untrust-  
worthy.

*Remarks by the Sessions Judge.*—The prisoner, who had been for several years in the service of the prosecutor, was directed on the morning of the 31st May, 1857, to go to a neighbouring village "Massongong" to collect rent. The deceased, a younger brother of the prosecutor, about seven or eight years old, was shortly afterwards found to be missing, and the prosecutor supposed that he had gone with the prisoner; but in the evening neither having returned, he went to the house of the latter, who said the boy had not gone with him. The prosecutor brought the prisoner home with him, and next day sent him to give notice at the thannah. The body was discovered in the Kallyagunge *haut* mangoe garden about half a mile south of the prosecutor's house, and within a short distance of the road to "Massongong." The body was partly covered over with leaves, swollen, and with a dark mark of a blow on the left temple, but without the ornaments (silver bangles, and anklets, and golden *lauvees* on the neck) which the boy had on before he was missing. The body was so much decomposed that the Civil Assistant Surgeon could not ascertain the cause of death.

The principal evidence against the prisoner is that of five witnesses, namely, "Buzaroo Pullee" No. 3, who, in the forenoon, remonstrated with the prisoner for passing through his field towards Kallyagunge *haut*, and states that the deceased, twirling about a string, was there following the prisoner. "Sookmaun Doss," No. 5, who saw the deceased, in the forenoon, with a man of dark complexion going towards Kallyagunge *haut*, and states that the prisoner appears to be the man he then saw. "Oopassee" No. 6, who saw the deceased, in the forenoon, with ornaments on his person in company with a man of dark complexion going south (which she mentioned, during the day, to the prosecutor when searching for his brother) but cannot say that the prisoner is the man. "Fakeera" No. 7, who, in the forenoon, saw a man come out of the Kallyagunge mangoe

garden alone going westward, and states that the prisoner appears to be the man he saw. "Boodhoo Chowkeedar" No. 8, who about midday, saw the prisoner go through his field towards his house rather more than a mile from the *bageecha* in which the body was found.

The prisoner pleaded *not guilty*. The substance of his defence in the *mofussil* and *Foujdary* was, that when on the way to "Massongong" to collect rent from "Sheedun Pully" he met a man (unknown, and not to be recognized) who told him that he would not find "Sheedun" in his house; that he, therefore, returned home, making some visits on the way, and did not go to his master's from the dread of being obliged to do some work. His defence before me was that while on his way to "Massongong" to collect rent he was taken ill, and returned to his house, where he remained until the afternoon, when the prosecutor came to enquire for the deceased. The evidence of the witnesses for the defence does not, in any respect, invalidate that for the prosecution, as the prisoner having been seen alone in the morning, and at or after midday, is quite compatible with his having murdered the boy in the forenoon, when he was seen going in company with him towards the place where the body was found, and shortly afterwards going away from the place alone towards his own house.

I concur in the *futwa* of the Law Officer which convicts the prisoner, and seeing no reason for doubting the evidence for the prosecution, or for supposing that the murder was committed by any other person, I recommend that he be sentenced to suffer death.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. A. Sounce and H. V. Bayley.) It appears that the prosecutor's brother, the deceased, was missed by the prosecutor on Sunday the 31st May, and that on that day the prosecutor had no means of accounting for the disappearance of the boy. Some time in the morning, the prisoner had been sent by the prosecutor to collect rents at another village, but the boy did not accompany the prisoner, nor does the prosecutor state any circumstances within his knowledge which shew how or when the boy, whom he knew to be at home, had an opportunity of joining the prisoner.

Three witnesses are examined, who at different places, some time on Sunday, profess to have seen the deceased boy. One witness Bunjaroo, says he saw the boy going, preceded by the prisoner, towards Kalleegunge *haut*; a second, Sookun, saw the boy going on followed by a man, whom he did not know but whom he thought to be a prisoner; and the third, a woman, Oopasee, saw the boy preceded by a man whom she thought *not* like the prisoner, going, as she says, towards the south.

A fourth witness, Fukeera, professes to have seen a man, on

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HALLALIE  
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HALALLEE  
KASSID.

the Sunday, come out of the Kalleegunge garden where the dead body was afterwards found, and this man he thought something like prisoner. Lastly, Boodhoo saw the prisoner on Sunday go towards his own house after inspecting his growing crops.

Such and no more is the evidence against the prisoner. At the most, only one witness speaks positively to seeing the prisoner and the deceased together. But the whole evidence, from the circumstances which attend its disclosure, is in itself full of suspicion. *Firstly*, it may be said that the prosecutor in his deposition admits that nobody spoke out till the Darogah threatened, and spoke harshly to the villagers. *Next*, two of the witnesses, Bunjaroo and Oopasee, say that they told prosecutor what they had seen on the very day of the disappearance of the deceased; but to the police, the prosecutor said nothing of what, if true, he had learnt; and *thirdly* though the Darogah began his enquiry on the 1st June, not till the 5th June did he hear of the statement made by Oopasee; nor till the 7th June, did he report that the other witnesses abovenamed had given the information which they now depose to, though all were residents in the same village with prosecutor.

We acquit the prisoner, and direct his immediate release.

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PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

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GOVERNMENT

*versus*

ALEE SERANG.

24-Pergun-  
nahs.

1857.  
November 21. Case of  
ALEE SE-  
RANG.

Prisoner convicted of fraudulently altering fabricated Advance Notes of sea-men.

CRIME CHARGED.—Charge 1st, 1st count, fraudulently fabricating a negotiable instrument (letter A) for Co.'s Rs. 50, dated 23rd February, 1857, purporting to be that of a Captain of a sea-going vessel, with intent to defraud; 2nd count, fraudulently fabricating (6) six negotiable instruments (B. C. D. E. F. G.) purporting to be those of a Captain of a sea-going vessel with intent to defraud; 3rd count, fraudulently fabricating 9 negotiable instruments (H. I. J. K. L. M. N. O. P.) purporting to be those of masters of sea-going vessels, with intent to defraud; 4th count, fraudulently fabricating 5 negotiable instruments (Q. R. S. T. U.) purporting to be those of a Captain of a sea-going vessel with intent to defraud; 5th count, fraudulently fabricating 5 negotiable instruments (V. W. X. Y. Z.) purporting to be those of a Captain of a sea-going vessel with intent to defraud; 6th count, fraudulently fabricating 8 negotiable

instruments (A. B. C. D. E. F. G. H.) purporting to be those of a master of a sea-going vessel, with intent to defraud; 7th count, fraudulently fabricating 3 negotiable instruments (I. J. K.) purporting to be those of a master of a sea-going vessel with intent to defraud. Charge 2nd, 1st count, issuing and selling to witness No. 1, a forged negotiable instrument (A.) for Co.'s Rs. 50, dated 23rd February, 1857, purporting to be that of a Captain of a sea-going vessel; knowing the said instrument to be forged and thereby defrauding the said witness of Co.'s Rs. 46; 2nd count, issuing and selling to witness No. 1, 6 negotiable instruments (B. C. D. E. F. G.) purporting to be those of a Captain of a sea-going vessel and thereby defrauding the said witness of Co.'s Rupees 312-12-6; 3rd count, issuing and selling to witness No. 1, 9 negotiable instruments (H. I. J. K. L. M. N. O. P.) purporting to be those of a Captain and a master of a sea-going vessel and thereby defrauding the said witness of Co.'s Rupees 432; 4th count, issuing and selling to witness No. 1, 5 negotiable instruments (Q. R. S. T. U.) purporting to be those of a Captain of a sea-going vessel and thereby defrauding the said witness of Co.'s Rupees 139-13-6; 5th count, issuing and selling to witness No. 1, 5 negotiable instruments (V. W. X. Y. Z.) purporting to be those of a Captain of a sea-going vessel and thereby defrauding the said witness of Co.'s Rupees 294-6. 6th count, issuing and selling to witness No. 1, 8 negotiable instruments (A. B. C. D. E. F. G. H.) purporting to be those of a master of a sea-going vessel and thereby defrauding the said witness of Co.'s Rupees 414; 9th count, issuing and selling to witness No. 1, 3 negotiable instruments (I. J. K.) purporting to be those of a master of a sea-going vessel and thereby defrauding the said witness of Co.'s Rupees 82-12-6.

CRIME ESTABLISHED.—Knowingly and with fraudulent intent issuing 37 Notes to the value of 1,721 Rupees, and thereby defrauding the prosecutor.

Committing Officer.—Mr. C. F. Montresor, Officiating Magistrate of the 24-Pergunnahs.

Tried before Mr. E. Latour, Sessions Judge of the 24-Pergunnahs, on the 28th July, 1857.

*Remarks by the Sessions Judge.*—Alee Serang, indicted on seven counts for fraudulently fabricating certain negotiable instruments, purporting to be orders for payment of advances to seamen and corresponding counts charging the prisoner with issuing the same with fraudulent intent and obtaining upon them various sums, aggregating Rs. 1,721-12-6, thereby defrauding the prosecutor of the same.

It appears that the prisoner on seven different dates, presented the Notes in question to the prosecutor, who discounts bills of this description, as per memorandum.

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| Date.   | Number.  | Gross Value. | Commission. | Net received. |
|---------|----------|--------------|-------------|---------------|
| Falgun. |          |              |             |               |
| 2       | 6 Bills. | 440          | 27 3 6      | 312 13 6      |
| 6       | 9 ditto. | 470          | 38 0 0      | 432 0 0       |
| 13      | 5 ditto. | 152          | 12 2 6      | 139 13 6      |
| 17      | 1 ditto. | 50           | 4 0 0       | 46 0 0        |
| 22      | 5 ditto. | 320          | 25 10 0     | 294 6 0       |
| 30      | 8 ditto. | 450          | 36 0 0      | 414 0 0       |
| Chet.   |          |              |             |               |
| 7       | 3 ditto. | 90           | 7 3 6       | 82 12 6       |
| Total   | 37       | 1872         | 150 3 6     | 1,721 12 6    |

Before the Magistrate the prisoner admitted presenting these Notes and obtaining the money upon them ; he states that he got them from the Office of some European. That he has been in the habit of getting bills of this kind cashed and discounted, his commission being 2 per cent. and the bill discounters' being 8 per cent. in all 10 per cent. That he is unable to explain what confusion has been caused in the present case. He states he received them from some crany, name unknown, with whom the prosecutor is said to be acquainted.

In this Court the defendant takes up a different basis of defence. He denies any dealings with the prosecutor and maintains that he has dealt with Teetooram in this line. That he never raised any money on these instruments from the prosecutor, who in collusion with Teetooram has got up this case. He admits signing the bills at Teetooram's request and begs that Teetooram may be sent for with his Ledger. That the witnesses named in the Calendar would have proved that he raised the money and paid the parties. They are absent on a voyage. That Junal Serang would also prove that he dealt with Teetooram as he stood security for him upon an advance made upon deposit of seamen's advance notes.

Mr. Ochelton of Messrs. Gladstone and Wylie, was examined as to the whole of the Notes being fabrications, and more especially to the one marked A for 50 Rs. being a Note issued at one particular date. This Note is in the form for native seamen's advanced Notes. The other form is for European seamen's advance Notes. They are negotiable instruments and

would pass by endorsement. The ships are imaginary; ditto the firms upon which they are drawn and also the Captains.

1857.

The evidence to the making the Notes as is usual, fails. The evidence to altering and issuing the same is complete. The Court sent for Teetooram at the request of the defendant. The evidence of this individual is quite adverse to the defendant. He admits previous dealings with the defendant, but although he is in partnership with Ramnarain Poddar, the evidence upon these Notes was made exclusively by the latter, in the joint account and during the witness's absence; the account-book is tendered with the different entries.

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The defendant belongs to a gang of forgers and swindlers. He is probably the party concerned in posting the Notes. The prosecutor states that for two or three months previously the defendant had dealt with him in discounting seamen's advance Notes at 8 per cent. discount, and at maturity the defendant used to go with him to Messrs. Gladstone and Wylie's Office, whilst he remained outside and the Serang used to go in for the money, and sometimes Abdool Kurreem accompanied him. This man is the durwan of the firm. The defendant used to take in the Notes and bring out the money, and whenever the prosecutor wished to go into the house, he was told that strangers were not admitted. The prosecutor then deposes to Ali Serang's presenting the different Notes and to his paying the money upon them at different dates, less discount, aggregating Rs. 1,721-12-6 and on going to cash them at Messrs. Gladstone and Wylie's by himself, he was told by the Durwan to bring the defendant with him, and two days afterwards he did so, and the Durwan Abdool Kurreem and the Serang (defendant) entered the office and kept him outside for an hour and a half, they having taken in the 37 Notes, when they returned and said that there was a great press of business that day; in short being put off in this way from day to day, the prosecutor went to Messrs. Paul and Company, Attornies, who went to the firm and it was ascertained that the Notes were all fabrications.

There was an excellent clue open to trace the whole parties concerned in the case, for it is impossible to consider the papers in this case and not to see, that there is a gang of forgers, carrying on an extensive business within the premises of Messrs. Gladstone, Wylie and Company. The previous Notes were cashed without difficulty at that office, but not by official people, so far as can be seen. This durwan or jemadar, Abdool Kurreem, seems to have been always more or less concerned in these payments. Luring on the prosecutor for a time, they involve him the more deeply at last; some of the former bills were paid not in cash, but by giving a bill at maturity for a certain sum and the balance in cash, but when this system was departed

1857. from and payment in full in cash was obtained, then the prosecutor is finally victimised.

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I think the police have lost an excellent opportunity of feretting out a gang of rogues, which is much to be regretted, as active steps taken, would probably have led to the discovery of similar fabrications upon those parties, the Durwan and mysterious Crany.

The Calendar was altered under my directions to correspond with the several different dates.

This is an offence within the meaning of Section X. Regulation XVII. 1817.

I sentence the prisoner in conformity with the second Clause of that Section for seven years' imprisonment with labor in irons on conviction of knowingly and with fraudulent intent, issuing especially and particularly the single Note for 50 Rs. and I convict him upon all the other counts of issuing the same and obtaining upon them the different sums charged, with the same fraudulent intent and knowledge and obtaining upon the thirty-seven Notes a gross sum of Co.'s Rs. 1,721, thereby defrauding the prosecutor to that amount, and I award to the prosecutor all his *bonâ fide* costs under Section 39, Regulation VII. 1803; and under Act XVI. 1850, I fine the defendant to the extent of 1,721 Rs. leviable by distress and sale, the said fine or such part of it as may be realized to be paid to the prosecutor, the costs being the first charge upon any such assets.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) The prisoner's appeal urges that he is an ignorant person incapable of fabricating the documents referred to, and that the Sessions Judge ought not to have convicted him without having examined the parties named in the notes. The first plea stands unconnected with any point of the case depending on it. The second plea is one which cannot be admitted, for, an inspection of the documents, more especially those marked L. M. N. and O. clearly shews the names of ships, seamen, firms, and captains, all to be gross fabrications. The evidence of the witnesses for the prosecution and the documents themselves prove the guilt of the prisoner. His defence is contradictory and inconsistent, for before the Magistrate, he admits dealing with Ramnarain, and before the Sessions Judge denies this *in toto*. He at first cited Ramnarain and the other Podar, Titooram, as his only witnesses before the Magistrate, and then subsequently to the Magistrate, and before the Sessions, he named four other persons, all he admits absent on voyages.

I see no reason to interfere with the conviction or the sentence. I reject the appeal.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

CHOTO CALLACHAND GHOSE (No. 7,) LOMBA CAL-  
LACHAND GHOSE (No. 8,) DEEGAMBER BAGNY  
GWALA (No. 9,) TEENCOWRY GHOSE (No. 10,)  
KOELASH GHOSE (No. 11,) NOBIN GHOSE (No. 12,)   
ISHWAR GHOSE (No. 13,) AND SOLEEM SHEIKH  
(No. 14.)

Hooghly.

1857.

CRIME CHARGED.—1st count, Nos. 7 to 13, dacoity on the night of the 11th January, 1848, in the Debanundo Path Thakoor bari at Kooley, thannah Sooksagore, zillah Nuddea; 2nd count, Nos. 7 to 12 and 14, dacoity on the night of the 26th June, 1848, in the house of Dhununjoy Pundit of Dogatchea, thannah Sooksagore, zillah Nuddea; 3rd count, against all the prisoners having belonged to a gang of dacoits.

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Case of  
CHOTO CALLA-  
CHAND GHOSE  
and others.

Committing Officer.—Baboo Chunder Sekur Roy, Deputy Magistrate for the suppression of dacoity at Hooghly.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Hooghly, on the 16th September, 1857.

Remarks by the Officiating Additional Sessions Judge.—First count, all the prisoners are charged with this dacoity; and two

Prisoners con-  
victed, the  
pleas of coun-  
sel on the  
facts, being  
overruled. Re-  
marks on the  
objection of  
the pleader as  
to the conduct  
of the trial  
before the Ses-  
sions Judge.

\* Wit. No. 1, Sylab Sheikh,  
" " 2, Muthoor Koomra.

approvers\* give evidence. Wit-  
ness No. 1 criminate all the  
prisoners accused, and witness

No. 2, criminate prisoners Nos. 7, 8 and 9. The original proceedings afford satisfactory corroboration of the evidence of the approvers. Humseshur Banerjee, the owner of the house, stated in his first deposition† that he had recognised prisoners Nos.

† *Nuthee* No. 4, page 9.

‡ Page 56.

§ Pages 21 and 22.

|| Pages 67 and 69.

7, 8, 9, 10 and 13, and he after-  
wards repeated that statement  
before the Magistrate.‡ Nobin  
Kowra, and Gopal Kowra, de-  
posed in the mofussil§ and before  
the Magistrate|| that they also  
had recognised prisoners Nos. 7,

8, 9, 10 and 13. The owner of the house is dead, and the other witnesses cannot be found. The evidence of the approvers is further supported by the confession of Damoo Bagdee (an approver, since transported) taken on the 24th July, 1854, in which he denounced prisoners Nos. 7, 8, 9, 10, 11 and 12, as his accomplices in this dacoity.

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and others.

Second count. One approver¶ criminales all the prisoners in

¶ Wit. No. 1, Sylab Sheikh.

\* Wit. No. 4, Tarip Sheikh,

this dacoity, except No. 13. A witness,\* who resided near the scene of the occurrence, deposes that he recognised prisoners Nos. 7, 8, 9, 10, 11, 12 and 14, among the dacoits; and it appears that he gave similar evidence at the time of the occurrence before the Darogah† and before the Magistrate.‡

† *Nuthee* No. 115, page 60.

‡ Page 98.

§ Page 60.

Callachand Mookerjee also deposed before the Darogah§ and before the Magistrate, that he had recognised all the prisoners accused. He repeated his evidence before the committing Officer on the 23rd of May last, and he died before the Sessions trial.

The prisoners, with the exception of No. 13, were denounced by Damoo Bagdee in two other dacoities, and also, with the exception of Nos. 12 and 13, in a third. It appears from other proceedings that the prisoners have constantly associated together for evil purposes. At page 4 of *nuthee* No. 194, there is a statement of the heads of the village, in which prisoners Nos. 7, 8, 9, 10, 11 and 12, are spoken of as a gang of bad characters. In a case of highway robbery attended with murder an anonymous petition|| was presented to the Deputy Magistrate of Santepore, informing him that all the prisoners, approver witness No. 1, and Damoo Bagdee (the late approver mentioned above) were in the habit of collecting together for the commission of robbery. At page 2 of *nuthee* No. 198, there is a report from the Darogah of thannah Sooksagore, affirming that prisoners Nos. 7, 8, 9 and 10, were notorious bad characters, but they had inspired such dread, that men were afraid to give testimony against them.

|| *Nuthee* No. 2, page 4.

The confession of witness No. 1, was recorded in December, 1853, and that of witness No. 2, in April last, and the prisoners were apprehended in May. The committing Officer certifies that precautions were adopted to prevent collusion; that the records were not received until after the confession of witness No. 1; and that while witness No. 2, was confessing, he was confined in a separate place under a separate guard, who were strictly ordered not to allow any one to communicate with him.

*Defence of the prisoners.* No. 7, stated before the committing Officer and at the Sessions that he has been falsely accused by the approvers, witness No. 1, having been induced to denounce him by one Gungadhur Thakoor with whom he, prisoner, is at enmity, and witness No. 2, having been apprehended in a case of dacoity in which he, prisoner, was prosecutor. Witness No. 6, deposes that Gungadhur Thakoor and the prisoner are at enmity, but he is not aware that witness No. 1, was a dependent

of the former. Witness No. 7, deposes that Gungadhur Thakoor in the month of Cheyt last, told him that he would soon have the prisoner made over to the dacoity Commissioner, a very improbable statement. Witnesses Nos. 8, 9 and 21, prove nothing in favor of the prisoner. Witness No. 23 deposes that Gungadhur Thakoor and the prisoner are at enmity, and that he has heard that the father of witness No. 1, was a debtor of the former; witness No. 24 deposes that the prisoner is a bad character. Witness No. 25 deposes that Gungadhur Thakoor had a quarrel with the prisoner, but he is unaware that witness No. 1 is in any way connected with the former.

Prisoner No. 8 states that he was in debt to Gungadhur Thakoor, and that witness No. 1 was constantly coming to him, the prisoner, to demand payment; that he had a fight with that witness during the Churruck *poojah*; and that he is an uncle of prisoner No. 7; witness No. 26 deposes that the prisoner is not a good character, and witness No. 27, that he considers him a bad character.

Prisoner No. 9 states that he had a quarrel with witness No. 1, during the Churruck *poojah*; and that he is a nephew of prisoner No. 7. Witness No. 29 gives the prisoner a good character, and deposes that he was present at the abovementioned quarrel. Witness No. 30 is unaware whether the prisoner is good or bad.

Prisoner No. 10 states that he had a quarrel with witness No. 1, during the Churruck *poojah*. The evidence of witnesses Nos. 10 and 31, is immaterial. Witness No. 11 merely says that the prisoner has been twice imprisoned. Witness No. 12 gives him a bad character. And witness No. 32 says that his character is not good.

Prisoner No. 11, states that he also had a quarrel with witness No. 1, during the Churruck *poojah*, when blows were exchanged; and that he is a nephew of prisoner No. 7. Witness No. 13, proves nothing in favor of the prisoner. Witness No. 14, deposes that prisoner is a servant of Madhub Baboo; and that he, deponent, was present, some years ago, at a quarrel between the prisoner and witness No. 1, on the occasion of the Churruck *poojah*. Witness No. 15, considers the prisoner to be a bad character, and deposes that he too was present at the quarrel in the Churruck *poojah*.

Prisoner No. 12 states that he had a quarrel with witness No. 1, during the Churruck *poojah*, and that he is a cousin of prisoner No. 7. Witnesses Nos. 17 and 18 prove nothing in favor of the prisoner.

Prisoner No. 13, states that witness No. 1, entertains enmity against him, because he is a brother of prisoner No. 7. Witness No. 34 deposes that the prisoner is not a good character. Witness No. 35 says nothing in his favor. And witness No. 36 cannot say that he is a good character.

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Prisoner No. 14 states that he gave information to certain zemindars, which led to the father and brother of witness No. 1 being seized and beaten. Witnesses Nos. 37, 38, 39 and 40, give the prisoner a bad character.

Prisoners Nos. 7, 9, 12 and 13 were defended by Baboo Bany-madhub Bannerjee, a vakeel of the Sudder Court, who commented at some length upon discrepancies in the evidence of the approvers, and who affirmed that the charge had been got up against his clients by powerful zemindars. The discrepancies are immaterial, and are such as might have been expected to occur in statements made after the lapse of so many years from the time of the occurrences. There is not the slightest proof of the allegation that the case has been got up.

Witness No. 2 was apprehended in the year 1845, in a case of dacoity, in which prisoner No. 7 appeared at the thannah as

\* *Nuthee* No. 53, pages 12 and 13. prosecutor\* on the part of his employer; and that fact renders it necessary to look upon the

witness's evidence with some degree of mistrust; but considering that the evidence of the other approver is entirely free from suspicion, and that it has been corroborated in a convincing and satisfactory manner, I convict all the prisoners of having belonged to a gang of dacoits, and recommend that they be transported for life.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) Baboo Benymadhub Mookerjee appears for prisoners Nos. 7, 9, 12 and 13. He pleads, *firstly*, that as the prisoner No. 7, has been released by the order of the Commissioner for the suppression of dacoity for the offences now charged, as they could not be sustained by evidence, the legal principle that no man should be troubled twice for one and the same cause should preclude his being now tried. I may at once remark that a release by an authority not having final jurisdiction does not constitute an *autrefois acquit* so as to bar *this* trial, on other evidence being available to support the commitment. *Secondly*, That no conviction can be sustained on approver-evidence unless that evidence is duly and sufficiently corroborated. *Thirdly*, that in this case the evidence at the Sessions of the approver-witnesses is inconsistent in the case of witness No. 1, with his general confessions of the 7th December, 1853, and with the deposition of witness No. 2, as to the place of meeting, as to the method of opening the door, as to the names of the Sirdars, as to who provided weapons, as to the opposition met with by the dacoits, and as to the booty. The pleader adds that the evidence of witness No. 4, is incredible as he deposes to having seen from outside what passed in premises which he admits were encircled by brick walls. The pleader further refers to the record, as to the booty obtained, to show that prisoner

No. 7 had means enough to render him comfortable without having recourse to dacoity, and that the amount gained was, as shewn by the confessions, very small, and he concludes by noticing the objections stated in the Resolution\* at foot. The evidence of witness No. 2, (a witness in the first count) is objected to as the record shews him to have been prosecuted by prisoner No. 7, in a case of dacoity; and in regard to prisoner No. 13, it is urged that witness No. 2 did not recognize him. *Lastly*, it is pleaded that witness No. 2 states to the Sessions that he did not know that Lylab, witness No. 1 was concerned in the dacoity charged in the 1st count.

The *first* point having been disposed of, I have to remark on the *second* plea that the evidence of the approver-witnesses is amply corroborated in the manner detailed in the 2nd and 3rd paras. of the letter of the Sessions Judge. Nothing has been adduced to refute that corroboration, and a careful perusal of the records referred to has convinced me of its validity. On the *third* plea the contradiction as to the locality of the dacoits meeting is *no* contradiction. It is distinctly stated that this took place *first* (*pruthumut*) at the garden; *then* (*puschat*) at the *bheel*; and that these adjoined. The pleader's objection rests on both places being named as the place of meeting. The plea that the door is said both to have been cut open, and opened from the inside is futile. The evidence shews there was breaking and cutting, and that the wall was topped with a view to the door being opened from the inside. The names of the Sirdars vary according to the gang to which deponents may belong; but even on this point the discrepancy is too slight and immaterial to call for further remark. Referring to witness No. 2, not knowing who brought the weapons, and witness No. 1, saying prisoner No. 7, did, it is obviously quite possible that each witness speaks truth, according to his knowledge. The same remark applies to the alleged contradiction as to the dacoits meeting with opposition. The witness No. 4 deposes he recognized certain prisoners when they attacked the premises, which he says were encircled by a brick wall, and also when they left, he being behind a *gola*. It is not shown to me that because there was a brick wall, it was therefore impossible for witness to have deposed truly. As to the amount of booty not being adequate temptation, I have to observe in the first place that the amount of booty in *any one* particular case is not the test of the profitability or otherwise of belonging to a gang of dacoits. In regard to the objection on the points noticed in the Resolution of the 10th I think the explanation of the Officiating Additional Sessions Judge below\* of the 20th November, No. 105, sufficient. On the

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\* Resolution of the Presidency Court of Nizamut Adawlut, No. 789, dated the 10th November, 1857, (Present H. V. Bayley, Esq.)



1857. latter objections, it is, I have to observe, not unfrequently the  
November 21. case that where gangs join, or members of separate gangs join,

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The pleader for prisoners Nos. 7, 9, 12 and 13, Baboo Benymadhub Bannerjea states, that he was present at the Sessions trial; and that witness No. 6, for the defence of prisoner No. 7, was illegally detained when other witnesses, examined on the same date, were allowed to go home; and that he brought this objection to the notice of the Officiating Additional Sessions Judge the next day, mentioning at the time that it had alarmed all the other witnesses who were to be examined subsequently, and prevented their speaking in his favor.

The pleader also states that when witness No. 2, was cross-examined as to his age in a manner which would have resulted in his stating himself to have commenced dacoity at the age of seven years, Radhika Persad Mojoomdar, one of the omrah of the Dacoity Commissioner, hinted to the witness in such a manner as to make him correct himself; and that this also the pleader pointed out to the Additional Sessions Judge.

As neither of these points is noticed in the letter of reference, and the pleader urges them here, the Court direct that the Officiating Additional Sessions Judge be requested to state any thing upon these points which he may consider necessary. An immediate reply is required to this requisition.

*In reply to the above Resolution the following letter, No. 105, dated the 20th November, 1857, was submitted by the Officiating Additional Sessions Judge.*

I have the honor to acknowledge the receipt of the Court's Resolution dated the 10th instant, No. 789, in which I am informed that Baboo Benymadhub Bannerjea, a pleader, who was present at the Sessions trial of Choto Callachand Ghose and others, has represented, first, that a witness was illegally detained with a view of intimidating others, and secondly that an omrah of the Dacoity Commissioner was permitted to hint to a witness the answer to give to a question regarding his age; and in which I am directed to submit any explanation I may wish to offer in regard to those two points.

First. It is true that the pleader made the same objection to me, but enquiry proved his imputation to be false. The first day's proceedings closed at a late hour, and I directed the discharge of those witnesses who had been examined. It appeared that one of those witnesses (No. 7,) had been cited for the defence of another prisoner, but through a mistake the omrah of the Dacoity Commissioner detained witness No. 6, instead of witness No. 7. There was no reason to believe that the omrah had been actuated by any improper motive. The pleader was unable to show that he had been; he had before falsely accused the omrah; and he (the pleader) cross-examined the remaining witnesses with a view to prove that they had been tampered with; but he entirely failed to substantiate his allegation.

Secondly. The lower classes of natives frequently profess to be ignorant of their ages, and when pressed to give some answer, reply at random. The witness in question replied at first in a vague manner, his appearance showing beyond a doubt that his answer could not be correct. By my order he was required to reflect a little, and he then gave the answer which has been recorded, and which obviously approximated to the truth. While, the witness was being questioned, the omrah of the Dacoity Commissioner offered to read the answer the witness had given to the committing officer, but it is untrue that he gave any hint to that witness.

one dacoit is not always known to the other, and it is in evidence that witness No. 2, did not make the acquaintance (*alap*) of witness No. 1, till after the dacoity charged in the first count. As to the point of the enmity of both witnesses I have given the objection every consideration, and having done so, I do not think the evidence sufficiently strong to shew that the enmity was such as to have led to or caused false depositions. It certainly could not have led to the statement against the prisoners in the antecedent Records Nos. 60 and 111, (vide pages of Records as cited by the Sessions Judge) of parties quite unconnected with such alleged enmity.

I convict the prisoners under Act XXIV. of 1843, and sentence them under the same Act to be transported for life with hard labor.

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PRESENT:

A. SCONCE, Esq., *Judge*, AND H. V. BAYLEY, Esq.,  
*Officiating Judge*.

GOVERNMENT AND PUCHOO BERRA

*versus*

SREEMOTEE KEENEE (No. 10,) BODEE BHUCKTA  
(No. 11,) SHARTUCK KOLA (No. 12,) AND NILAM-  
BUR KOLA (No. 13.)

Midnapore.

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CRIME CHARGED.—Prisoner No. 10, wilful murder in having on the night of the 7th May, 1857,—27th Bysack, 1264, beaten Sreemotee Huree Preeya, the daughter of the prosecutor Puchoo Berra, with a bamboo blow-pipe and thrust her mouth into a burning hearth, thereby causing her death. Prisoners Nos. 11 to 13 being accessories after the fact and for privacy.

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Committing Officer.—Mr. H. T. Prinsep, Officiating Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 17th October, 1857.

*Remarks by the Sessions Judge.*—The prisoners plead “*not guilty*,” make no defence; but rely on a return made by the mohurrir of thannah Musundpore when he enquired into the alleged fact of the young woman, Huree Preeya, having left her father-in-law’s house.

Prisoner released; the evidence being insufficient to warrant a conviction.

Remarks on the proceedings of the Police and Deputy Magistrate; and on the letter of reference of the Sessions Judge.

The circumstances of the case, as set forth by the prosecution, are briefly as follows; the deceased Huree Preeya, about seventeen years of age, a daughter-in-law of Sreemotee Keence prison-

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er No. 10, and Shartuck Kola prisoner No. 12, and one of the wives of their son Nilambur Kola prisoner No. 13, was boiling paddy after night fall and broke the pot in taking it off the fire-place. She apprized Keenee of what happened, who thereupon violently beat her on the head and body with the bamboo blow-pipe and then thrusting her head into the fire kept it there some time until she died, she then removed the body and hid it near the granary.

Shortly after Shartuck Kola prisoner No. 12, the father-in-law, returned home and began taking his food.

He enquired for his eldest daughter-in-law and was informed by Peylee witness No. 1, his second daughter-in-law, of what had occurred.\* He found the

\* Wit. No. 1, Peylee, pages 14 to 18. body of Huree Preeya. His wife admitted the act, and he with

the assistance of his brother-in-law Bodee Bhuckta prisoner No. 11, and of his son Nilambur Kola prisoner No. 13 removed the body and threw it into the Sowraberia Khal.† There was

† Confessions of the prisoners Nos. 11, 12 and 13.

Police records, pages 88 to 96.

" 97 to 102.

" 103 to 108.

Foujdaree " 109 to 115.

" 116 to 121.

" 122 to 128.

another eye-witness before the Deputy Magistrate's Court Sreemotee Radhee No. 2, sister of prisoner No. 11, but in the sessions she has flatly contradicted the deposition she before gave, and has been committed to take her trial for wilful perjury.

The Law Officer distrusts the evidence of witness No. 1, Peylee, and the whole of the confessions of the prisoners, and delivers a *futwa* of acquittal; mainly for the following reasons.

For distrusting witness No. 1, Peylee.

That, at the previous enquiry regarding the missing girl held by the police muhurris, Peylee had said that the deceased had run off with one Mudoo Doss of Calcutta; that before the Police and Magistrate she had spoken of the oppressive conduct of her mother-in-law, Keenee, prisoner No. 10; and that evidence detrimental to that prisoner should not now be accepted from the said Peylee.

For distrusting the confessions, 1st, that of Keenee; that she had denied the charge in the mofussil where she averred the abduction of her daughter-in-law by Mudoo Doss; on which point no enquiry had been made; that in the confession, recorded by the Deputy Magistrate, Keenee, denying her guilt, said the deceased fell into the fire, and that there was nothing but Peylee's evidence to retort this statement.

2nd, for distrusting those of the other prisoners.

That their confessions are contradictory as to the cause of death; that the said confessions show that the prisoners had arranged with the police muhurris, the Karpurdaz of the Ze-

mindar, &c. to hush up the matter; that as nothing further had transpired against the prisoners, and the body had not been found, it was unreasonable to accept their confessions as voluntary.

The Law Officer doubts the deposition of the prosecutor because he kept silence after hearing of his daughter's murder from Tara and Suchec, witnesses Nos. 17 and 18.

I cannot see the force of the objections thus taken by the Law Officer, and, dissenting from his view of the case, I submit the record for the orders of the Court.

The matter was first brought to the notice of the police in the following manner.

On the 25th May, the mohurrir of thannah Musundpore reports that on the 13th Joistee, he received intimation from Chundec Bearer Tuhseeldar of Hathgetchia that Huree Preeya the deceased, had on the night of the 10th Joistee, got up from her sleep, and gone no one knew whither.

A burkundaz who had been deputed for the purpose brought Shartuck Kola, prisoner No. 12, Modon Pridhon Ameen and Judishteer Doolae chowkeedar to the thannah, when they gave a writing agreeing to produce the missing woman in a week. On the 27th idem, the Deputy Magistrate directed the mohurrir to make enquiry and find the missing girl. On the 26th the mohurrir reported that the said Shartuck Kola came on the 16th Joistee, petitioned that his daughter-in-law had run away, and furnished a descriptive roll for general information.

After subsequent enquiry held by the mohurrir it is stated that Shartuck Kola, prisoner No. 12, deposed that a silk Pyekar Mudoo Doss, who came for cocoons to his village, had once or twice eloped with his daughter-in-law but that she had been recovered. That the said Mudoo had come on the 10th Joistee, when Huree Preeya again ran away with him. This statement is said to have been echoed by the father of the girl, Puchoo Berra the prosecutor, by Nilambur Kola prisoner No. 13, by Keence prisoner No. 10, by Peylee witness No. 1, by Bodee Bhuckta prisoner No. 11, by Judishteer chowkeedar, Keenoo Sasmul and some ten others. This enquiry was made on the 4th June, but the mohurrir makes his return only on the 7th idem giving his opinion that Huree Preeya had gone off with Mudoo Doss. Not the slightest reliance can, in my opinion, be placed on this report. The whole story of Mudoo Doss, was, no doubt, an after-thought; a falsehood got up to stave off enquiry. Had it been true, Shartuck Kola and Judishteer chowkeedar would have informed the mohurrir when first summoned to the thannah on the information given by Chunder Berra Tuhseeldar; and Mudoo Doss the alleged paramour of Huree Preeya would have been named then, or when Shartuck furnished the descriptive roll of the girl.

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Had it been true, the residence of Mudoo Doss would have been particularly given, and he would not have been so vaguely described as Mudoo Doss of Calcutta.

Puchoo Berra the prosecutor and father of the deceased swears the mohurrir would listen to nothing he had to say; and Keenoo Sasmul witness No. 34, for the defence swears he was not present at the mohurrir's enquiry: and even had Peylee witness No. 1, then made the statement attributed to her, it must be deemed to have been made under restraint and coercion. A young girl of sixteen or seventeen years of age, it was not likely that she would boldly step out of her father-in-law's house and bring the accusation against all her husband's family. It is remarkable that shortly after this occurrence she, Peylee, had been removed to her own father's house, and it was from his house that she was brought to give evidence as a witness at the subsequent investigation held by the Darogah. Not a single witness for the defence knows any thing about Mudoo Doss. The enquiry may then, I think, be set aside as giving a false aspect to the case.

The direct evidence in this case is that of Sreemotee Peylee, the second wife of prisoner No. 13; the substance of it having been given in the 3d para. of this letter, it is not necessary to recapitulate it. She mentions that the prisoner No. 10, Keenee held the head of the deceased Huree Preeya in the fire-place for one *dundo* or twenty-two and half minutes, her calculation of the time may be wrong, but less than half the time would have sufficed to destroy life. She distinctly swears that Huree Preeya died then and there.

Her evidence was given in a straightforward manner. The vakeel for the prisoners was unable to shake it in his cross-examination of the witness, and her evidence receives ample support and corroboration from the confessions of the prisoners. These confessions have been proved by the attesting witnesses to have been voluntary. That part of Keenee's confession where she says the girl fell into the fire cannot be received as a refutation of the testimony of this eye-witness. It is in itself improbable. Had such been the case, it is not likely that the accident would have resulted in death, for Keenee was at hand to have helped her, and Keenee herself admits in her confession that the witness Peylee was present. It is true that the body has not been found, but the whole of the defence has been ignored by the prisoners' witnesses. I can see no reason whatever to suppose that there is the remotest chance of Huree Preeya's being still in existence, so that the non-production of the corpse should have any effect on the measure of punishment. The husband, the brother and the son of Keenee have all of them confessed to having removed the dead body, and thrown it into the Sawra-beria Khal, which is influenced by the tide, and I can see no

reason why sentence of death should not be passed against Sreemotee Keenee, prisoner No. 10.

The other prisoners are fully convicted, in my opinion, on their own confessions and by the testimony of the witness Peylee of being accessaries after the fact of this murder and I would recommend that they be each imprisoned with labor in irons for fourteen years.

*Remarks by the Nizamut Adawlut.*—(Présent: Messrs. A. Seonce and H. V. Bayley.) The prisoner No. 10, is convicted by the Sessions Judge of the wilful murder of the deceased, her daughter-in-law, by burning her to death; and the Sessions Judge recommends that a capital sentence be passed upon her.

The direct evidence entered in the Calendar is that of witnesses Nos. 1 and 2 Musst. Peylee, and Radhee Bewa; and the Sessions Judge also relies on the prisoner's confessions before the Deputy Magistrate.

As to the testimony of witness No. 1, Musst. Peylee, it does not appear, in the first place, from any of the proceedings before the police, on what clue this witness was obtained. The Darogah's report of the 13th July, merely states that she came forth from her father's house and deposed. Next, it is evident from the whole tenor of her testimony that she had a strong bias against the prisoner No. 10. Lastly, her evidence is opposed to the probabilities of the case; for instance, there is no reason apparent why this witness should willingly be a passive spectator of so cruel a murder when persons were in the house whom she might easily have summoned to prevent it. It is also most improbable that if the deceased had been held over the fire by prisoner No. 10, till burnt to death, her screams should not have aroused the other inmates of the house, amongst whom was her husband, who had no quarrel with her, and no cause to wish her death; the neighbours too were equally liable to be aroused by her cries, and nothing is shewn to lead to the supposition that any thing was done to prevent her crying out: further, it is difficult to imagine how the same fire in a native cooking fire-place, which burnt the head and face of the deceased when held down to it by the neck, by the prisoner, should have left prisoner unscathed. As to the evidence of witness No. 2, Radhee Bewa, it is to be observed that she so completely contradicts in the Sessions, what she had deposed to before the Deputy Magistrate, that no use can be made of her testimony for the conviction of the prisoner. Moreover, the prisoner's own confession to the Deputy Magistrate is *not* that she, prisoner, caused the death of the deceased by holding her over the fire till she was burnt to death, but that the prisoner struck the deceased over the head with the hollow bamboo used as a blow-pipe for the fire-place, and that deceased *fell* into the

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fire-place after the blows, and was *thus* burnt to death. There is positively no evidence but that of Mussamut Peylee, (on which we *cannot* rely,) to shew that the case was otherwise. Indeed as far as corroboration is to be looked for from the confessions of the other prisoners, the exculpatory account given by prisoner No. 10, before the Deputy Magistrate is that which these confessions support.

The body was never found, or examined; nor is there any independent evidence as to the cause of death.

The above considerations would of themselves lead us to deem the evidence for the prosecution insufficient to sustain the conviction. But, in addition to these, we find on referring to the record that the event is alleged to have taken place on the 7th of May; the mohurrir of the police station investigated the case, and reported on the 27th of June, that the deceased had eloped with one Mudoosoodun Doss; and had *not* been murdered. An anonymous petition was given to the Deputy Magistrate on the 4th July stating that deceased had been murdered, but that the police had hushed up the case. On this, on the 9th July, the Deputy Magistrate ordered the Nazir to send out some "active person" to investigate it. A *tacednuvees* was accordingly deputed; and submitted a report on the 11th July. The substance of this report is that by various kinds of deception (*behana*) the *tacednuvees* had been able to get people to speak to him on the subject, but that one Sreemunth was his chief informant. This Sreemunth deposes that he heard the story of prisoner having murdered deceased from the aunt (name unknown) of prisoner No. 13, the husband of the deceased, and other persons, (*names unknown*.)

We would here remark that we consider the conduct of the Deputy Magistrate in passing such an order as that of the 9th July, very improper.

The above preliminary proceedings at the police necessarily throw great doubt upon the whole case, and taken in connection with the insufficiency of the evidence for the prosecution against prisoner No. 10, leave us no other course than to acquit the prisoner No. 10, of the charge of wilful murder. It follows that prisoners Nos. 11, 12 and 13, convicted of being accessaries after the fact of wilful murder, and of privy to it, must be acquitted also.

We therefore direct the release of all the prisoners.

The Court have to observe in conclusion that the Sessions Judge should have stated more clearly and precisely what was mentioned in the confessions of each prisoner, and how these confessions may have varied on main points in each Court in which they were given, instead of referring to them in the vague manner he has done in his letter of reference.

Further the Sessions Judge speaks of the evidence of witness

No. 1, (in para. 6) thus: "She mentions that the prisoner No. 10, Keenee, held the head of the deceased Harree Preeya in the fire-place, for 1 *dundo* or 22½ minutes." But this witness does *not* so depose at the Sessions; the words, similar to the above, which he uses, are that deceased *died after* that interval, *not* that she was burnt *for* that interval, being held down by the prisoner, No. 10, during it.

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SUMMARY CASES.

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SUMMARY CASES.

NOVEMBER, 1857.

PRESENT :

G. LOCH AND H. V. BAYLEY, Esqs.,

*Officiating Judges.*

No. 89, OF 1857.

*Application for review from decision No. 47, of 1857.*

ANDREWS, APPLICANT.

Counsel for applicant, Mr. Allan.

The first plea is that an appeal cannot lie in this, a case under Act IV. of 1840, and in which the Sessions Judge's order, be it legal or not, is final by the precedent of Dalrymple's case, page 1453 and page 1461, Vol. I. 1851, September 6th.

The Counsel relies on the words "the Nizamut Adawlut cannot assume to itself jurisdiction on the ground that the orders passed by the Sessions Judge are unwarranted or irregular" at the end of page 1461.

The second plea is, that the word "illegal" in our judgment is not justified by the record.

The third plea is, that the Sessions Judge's order is not illegal, as it follows the order and intent of the decision under Act IV. of 1840, cited in it.

The fourth plea is, that the order of the 29th October, 1851, gives the possession to petitioner of 16 annas, by the use of the words *Bibadhi Mehal Musulum*.

Our former decision in this case, of which a review is applied for, is appended.\* We interfered with the decision of the

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Application for review in a case under Act IV. of 1840, rejected by a majority of the Nizamut Adawlut, one Judge holding the former judgment setting aside the Judges' proceedings as illegal on account of want of jurisdiction to be right; and the other that no review is admissible in such cases.

\* Orders passed by Messrs. G. Loch and H. V. Bayley on the 18th May, 1857.

The Sessions Judge has reversed the Assistant Magistrate's decision, striking off a case instituted under Act IV. 1840, because he considered that the property was held *ijmali*, and therefore that a suit under Act IV. of 1840, could not be heard. It is urged that the Sessions Judge gives no reason for reversing the order; that the appellant Newaz Ally had been previously put in possession of the whole estate, under a decision under Act IV. 1840, and that till this possession is set aside by a regular suit, the appellant must be continued in possession.

1857. Sessions Judge, in this case, because he had committed an irregularity in having acted contrary to the rule laid down by this Court in their letter to the Secretary to the Sudder Board of Revenue dated 24th August, 1849, which prescribed that suits under Act IV. of 1840, could not be entertained between partners in estates held in common for shares of the estate, though suits for defined portions of land held in separate possession might be admitted.

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But looking again at Dalrymple's case, we think our interference in the case, (the review of our order in which is now asked for) was *against* that precedent, and we are inclined to admit the review. Mr. Allan, who appeared in the original case for Andrews, begs that the matter be referred to a full bench, in order that the decision in Dalrymple's case may be re-considered, as that decision impedes the power of the Nizamut Adawlut, and it is of great public importance that this Court should have the power of correcting mistakes of the lower Courts arising from a misapprehension and neglect of the law.

*Opinion of the full bench.*

*Mr. H. T. Raikes.*—This is a matter in which the Court cannot interfere in its present state. Messrs. Loch and Bayley appear to have reversed an order of the Sessions Judge in an Act IV. case, and an application for a review of their judgment has been submitted to them. This review they represent themselves to be "inclined to admit," but refer the question of the propriety of granting the admission to a full bench. The law, however, requires that every application for a review of judgment must be heard and determined by the Judges who passed the judgment if still present in the Court, and consequently the disposal of this matter (the application) must rest entirely with Messrs. Loch and Bayley, and any reference to us should follow and not precede a decision on this point.

Counsel for the appellant here, Andrews, urges before this Court, that the Act IV. decree quoted by the Sessions Judge comprised only a two annas share of the estate and did not give as stated by him possession of the whole mehal.

From the Magistrate's proceeding it is evident that the appellant here, Andrews, has obtained possession of a share in the estate, and this fact as stated by the Magistrate is not impugned by the Sessions Judge. It is also evident that the Act IV. suit referred to in the Sessions Judge's decision only gave Newaz Ally possession of a two annas share in the estate and he cannot on that rest his claim to be kept in possession of the whole. The Court therefore reverse the decision of the Judge as illegal, and confirm the order of the Assistant Magistrate, which has been passed in conformity with the letter of the Sudder Dewanny Adawlut addressed to the Secretary to the Board of Revenue, dated 24th August, 1849, No. 1307 and circulated to the Commissioners of Revenue by the Sudder Board on 30th May, 1851, No. 15.

*Messrs. B. J. Colvin, A. Sconce and J. S. Torrens.*—We concur with Mr. Raikes. 1857.

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JUDGMENT.

*Mr. G. Loch.*—Application for the review of our judgment in the case of *Andrews versus Newaz Ali* was made by the latter, on the grounds that the Nizamut Adawlut was prohibited by the provisions of Section 2, Act XXXI. 1841, and the rule laid down in Dalrymple's case (*Vide Nizamut Adawlut Reports*, 6th September, 1851, page 1467) from interfering with an order of a Sessions Judge, passed in a miscellaneous case, be that order right or wrong; that this case in which interference of the Court was solicited by the appellant *Andrews* was a trial under Act IV. 1840, and being a case other than a criminal trial, the order passed therein by the Sessions Judge was *not* open to review by this Court.

The Court interfered with the decision of the Sessions Judge because he had acted contrary to the rule laid down by the Sudder Dewanny Adawlut in their letter to the Secretary to the Board of Revenue, dated 24th August, 1849, which prescribed that suits under Act IV. 1840, could not be entertained between partners in estates holding in common, for shares in the estate, though suits for defined portions held in separate possession might be admitted.

It is contended on the other side that the order of this Court dated 18th May, 1857, is neither opposed to the law (Act XXXI. of 1841,) nor to the precedent above quoted; that as the Sessions Judge acted in the case without jurisdiction, this Court had the power of interference, as the Sessions Judge's enquiry was illegal from the beginning; that in the case of the Collector of Moorshedabad *versus* Kashinath Nahipundah Buttacharji, reported at page 250, of the Sudder Dewanny Reports for 1851, dated 18th April, the Court on the Civil side interfered in a case of resumption and set aside an illegal order of the Revenue authorities, who had acted without jurisdiction, whereas had the order passed been legal, the Court could not have interfered; that thus when a Sessions Judge assumes a jurisdiction which does not belong to him, the Court will interfere to correct the mistake and stop the proceedings under whatever law the Lower Court profess to be acting. Mr. Allan, puts it thus: "Suppose the Sessions Judge of Hooghly were to try an Act IV. case relative to lands in the Baraset district, would not the Court of Nizamut Adawlut on appeal interfere and quash the proceedings? Would the Court be satisfied with saying that they could not interfere as the law did not permit of an appeal? So the Court have authority to interfere in the present case where the Sessions Judge has acted beyond his jurisdiction, for it has been ruled by this Court that suits between partners holding lands in common cannot be tried

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under Act IV. of 1840. It is added that in Dalrymple's case, there was no question as to the jurisdiction, as that was an attempt to induce the Nizamut Adawlut to go into the merits; but that in the present case neither the Magistrate nor the Sessions Judge had jurisdiction.

The Magistrate struck off the suit under Act IV. 1840, as inadmissible, because the parties were joint proprietors and held joint possession. The Sessions Judge admitted an appeal on the part of Newaz Ali and declared him to be in sole possession of the estate, resting his opinion on a previous decision under Act IV. in which the said Newaz Ali was a party. The decree, however, on which the Sessions Judge's opinion is based gave possession only of a two-annas share, and not of the whole estate. As therefore the fact of Andrews's joint possession had been proved before the Magistrate and not controverted by the Sessions Judge, who had misread the proceeding in which he declared the possession of the whole estate to be with Newaz Ali, this Court interfered to correct the Sessions Judge's error, who, as the Mehal was held in joint possession, had clearly acted contrary to the rule laid down in the Court's letter of 24th August, 1849, and *consequently beyond his jurisdiction*. The decision quoted by the Counsel for Andrews is not to the purpose, it being merely a boundary dispute, but there is a summary decision of a full bench 1st September, 1846, in the case of Aladh Munee, petitioner, page 107 of Carrau's Edition, where this Court interfered in a case under Act XIX. of 1841, and quashed the proceedings of the Lower Court, as the Judge had acted without jurisdiction, though by law the orders of the Lower Court are final. For a similar reason, I consider the interference of this Court in the present case was justifiable, and therefore I would not admit the review.

*Mr. H. V. Bayley.*—There are three questions involved in this application, viz.

I. Whether we should interfere with the order of the Sessions Judge, because acting on a decree which gave petitioner, Newaz Ali a 2-16th of the estate only, he erroneously proceeded under Act IV. of 1840, to give the petitioner the *whole* estate?

II. Whether the Sessions Judge, having acted in contravention of the letter of this Court of the 24th August, 1849, has not acted without jurisdiction?

III. Whether this Court can quash the proceedings of the Sessions Judge, on that ground?

On the *first* question; I do not think that we can interfere with the Sessions Judge, on the ground that the Sessions Judge "misread the proceedings on which he declared the possession of the whole estate to be with Newaz Ali." I hold this opinion, because the subject matter of the case was one of disputed possession, *properly coming under Act IV. of 1840*, and in fact such

misreading comes nearly to the same thing as other erroneous consideration of, or value given to, evidence adduced. I think that where the *subject matter* of the case is one coming *properly* under Act IV. of 1840, errors of the kind now under view do not admit of a summary special appeal to the Nizamut Adawlut. The proceeding is *properly* one under Act IV. of 1840. It comes before us in that shape. Such proceeding is a *judicial proceeding other than a criminal trial*, and under Section 2, Act XXXI. of 1841, there is BUT ONE appeal, and that to the Sessions Judge. This Construction is clearly upheld by Dalrymple's case (6th September, 1851, page 1461,) in the final judgment in which the full bench clearly laid down that the interference of the Nizamut Adawlut is barred, and that "it cannot assume to itself jurisdiction on the ground that the orders passed by the Sessions Judge are unwarranted or irregular."

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On the *second* question ; I will not go into the matter of whether the letter of this Court of the 24th August, 1849, is or is not against the intent of Act IV. of 1840, but confine my remarks to the consideration of whether the Sessions Judge, having acted in contravention of the letter of this Court of the 24th August, 1849, has not acted without jurisdiction. That letter lays down that matters of disputed possession of sharers of joint *undivided* estates, shall *not* be tried under Act IV. of 1840. Therefore, so far as the Sessions Judge is bound by the views and Constructions of this Court, he has acted without jurisdiction.

On the *third* question ; I do not think the law, Section 2, Act XXXI. of 1841, either in its terms, or as construed in Dalrymple's case allows the interference of this Court in such a matter as this. The last paragraph but one of the judgment of the full bench, (page 1461, *ad finem*) is explicit and decided. And certainly Act IV. cases are in themselves summary judicial proceedings other than criminal trials, and come quite within the meaning and intent of the law, and expressly within that of the precedent cited. The Sessions Judge has acted without jurisdiction. His doing so is "*unwarranted*." Still the precedent bars our interference. The law, however, does not leave the opposite party, Andrews, without a remedy. The very Act IV. of 1840, itself provides the remedy against a Sessions Judge acting without jurisdiction, or in any other "*unwarranted*" or "*irregular*" way. (Vide Sections Nos. 2, 3, 4, 5 and 6,) by leaving it open to such party to sue for a reversal of the award or order of any Court acting under Act IV. of 1840, in any Civil Court. Section 8 of Act IV. of 1840, in reference to appeals under the Act, applies only to such appeals as are admissible by law. Section 2, Act XXXI. of 1841, makes such appeals lie to the Sessions Judge, *and to him only*. It has been argued that



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if the Nizamut Adawlut refuse to interfere in the most obvious case of want of jurisdiction, it repudiates its own constitutional power of supervision and direction of subordinate Courts, and directly upholds illegal and unwarranted proceedings. But I am not willing to decide this case on general deductions of this nature, or with reference to arguments as to analogy, based on cases cited from the *Civil* decisions and referring to laws not touching this case. This case should be decided, I think, on the special application of the law, (Act XXXI. of 1841,) and Dalrymple's precedent to its own particular characteristics. The policy or possible anomalies of Act XXXI. of 1841, are not for our consideration in this application; our duty here is to administer the laws referred to; and, on this principle, for the reasons I have above given in detail, I do not think the law (Section 2, Act XXXI. of 1841,) as construed by the last paragraph but one of the judgment of the full bench in Dalrymple's case, (6th September, 1851, page 1461,) will allow of the interference of the Nizamut Adawlut in *this* case.

I therefore would admit the review applied for by Newaz Ali petitioner. As there is a difference between my colleague and myself, let the papers go before the Judge of the Miscellaneous department, Mr. Sconce.

*Mr. A. Sconce.*—I apprehend that it is not competent to myself, who took no part in the original order of which the review is applied for, to give an opinion as to the admissibility of the review. I cannot be supposed to instruct any judge that the view which he formerly took is defective and ought to be reconsidered. A Judge, being present in Court, is alone competent, it seems to me, to say whether his first order should be reviewed.

Besides, I very much doubt if any decision of the Nizamut Adawlut can be reviewed. There is, I believe, no legal authority for this course. Undoubtedly, a criminal conviction and sentence imposed by the Nizamut Adawlut cannot be reviewed; and by analogy, I rather think, the same principle applies to all orders of the Court.

#### FINAL ORDER.

With reference to the above, the Court consider that as Mr. Loch, would not admit the review under the circumstances of the case, and Mr. Sconce, would not admit the review for the reasons he gives, no review can be admitted. Application rejected.

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PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge.*

No. 108, of 1857.

PEAREE LALL MUNDUL, PETITIONER,

*versus*

RAM COMUL MUNDUL.

COUNSEL FOR PETITIONER : BABOO AUSHOOTOSH CHATTERJEA.

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*Abstract grounds of appeal.*—1st, A Foujdary Court had no authority to take cognizance of the present complaint when first brought, under Act IV. of 1840, or XXI. of 1841, as the period allowed by law for its institution had elapsed. 2ndly ; because this very plaintiff had previously brought a suit for the construction of a bridge over the disputed ground, and his said suit was dismissed on the 24th April, 1857. Besides the suit brought by Kennoo Bloony and others in connection with that property was likewise dismissed.

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Case of  
PEAREE LALL  
MUNDUL.

The omission to mention that a case is brought under Act IV. of 1840, in a petition, when the real subject-matter of the case is one under that Act, causes no want of jurisdiction, so as to admit a Summary special appeal to the Nizamut Adawlut against the intent of Act XXXI. of 1841.

JUDGMENT.

The pleader for appellant, Baboo Aushootosh Chatterjea urges :

I.—That the case is not one under Act IV. of 1840.

II.—That it is not one under Act XXI. of 1841.

III.—That the order therefore is one which neither the Magistrate nor Sessions Judge had legal authority to issue.

The above is read over to the pleader, who says these are his pleas.

On the *first* point, I observe that the Magistrate records on the 14th September, that he has taken up the case under Section 6, Act IV. of 1840. The very petition (5th July, 1857, by Ramcomul), which the pleader reads to support his pleas, is one distinctly asking for magisterial interference on a subject-matter which of itself is one under Act IV. of 1840. Even assuming that the petition omitted all mention of Act IV. of 1840, in express words, still it clearly ends with a prayer, the admission of which could only be under Act IV. of 1840. The Magistrate judged the subject-matter to be one under Section 6, Act IV. of 1840, and so decided it.

I think the prayer of the petition and the subject-matter of the case as given in the judgments of the Sessions Judge and Magistrate justified the Lower Court's treating the case under Act IV. of 1840, and that there is no illegality. It is obvious that if the mere technical omission of numbers and dates of Regulations by parties were to admit of pleas of non-jurisdiction of Courts, a purposed omission might be urged to give a

1857. right of appeal here, which the law, Act XXXI. of 1841, never contemplated. The subject matter of this case is really under November 16. Act IV. of 1840. The Magistrate and Sessions Judge had Case of jurisdiction. The Act IV. order is a judicial proceeding other PEAREE LALL than a criminal trial. Section 2, Act XXXI. of 1841, and MUNDUL. Dalrymple's precedent 1851, 6th September, page 1461, bar the interference of this Court.

My opinion *in extenso* on this point has been so recently recorded in Andrew's case, decided on the 4th of November, 1857, that I need not further it.

I reject the petition.

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PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge*.

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No. 107, of 1857.

MOONSHIEE MOZAHIR, PETITIONER.

VAKEEL OF PETITIONER, MR. R. NORRIS.

24-Pergun-  
nahs.

1857. CRIME CHARGED.—Cattle-stealing.

Decision of the Officiating Joint-Magistrate of Baraset.  
November 17. " This is a case of stealing Brahminee Bulls. Mr. Hampton, the Case of Ijardar first reported that the defendant, Mozahir Moonshee, MOONSHIEE was stealing Brahminee Bulls and selling them and gelding them, MOZAHIR. and that this was disgusting to the Hindoos. I ordered the police to go and enquire. The result was, that the buxee and some burkundazes went and found the defendants, Buxoo, Appeal re- Ameer, Koodrut, Amecnooddeen Kotal, in the act of ploughing jected. Pica of want of ownership in Bhraminee Bulls over-ruled under Construction No. 803. Mozahir Moonshee's fields; one Brahminee Bull (gelded) being actually yoked to the plough and five were standing by under the care of prisoners, waiting their turn in the usual way; two more also gelded were found a little way off. At first this man's influence was so great, that even the Hindoos, who had complained to Mr. Hampton's assistant, Mr. Cockburn, when he thought that Mozahir Moonshee was likely to get off, were unwilling to give evidence against him, but as soon as he was put in *hazut*, this came forward. I also summoned Mr. Cockburn. From the evidence of the witnesses, it is clearly proved that Assanullah has long been engaged in the trade of Brahminee Bulls, having received a purwannah from the Municipal Commissioners. This was magnified into an order of Government, and under the protection of this, he was in the habit of seizing bulls for Mozahir Moonshee, who was in the habit of selling them. Presently, I am informed that since the apprehension of Mozahir became known, some scores of bulls of this description have been re-

leased by men who purchased them from Mozahir. The Superintendent of the Gowkhannah assures me that he has strictly forbidden the seizing of such bulls in the district of Baraset. The charge of gelding is clearly proved. It has been ruled by Construction 803, that the stealing of Brahminee bulls is to be considered cattle-stealing. These Bulls have all had the old brands rebranded and have all got the marks of the yoke on their necks. Such conduct on the part of these Mussulmans is sufficient to cause a serious disturbance. Mozahir Moonshee is a well known character, and the worst conducted man in my district. He is a discharged police officer. I sentence Mozahir and Assanullah to be imprisoned with labor and irons for eighteen months each, the remainder to be imprisoned for two months with labor."

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Case of  
MOONSHEE  
MOZAHIR.

*Decision of the Sessions Judge.*—"In this case the appellant, Mahomed Mozahir, has been convicted by the Joint-Magistrate of Baraset for cattle-stealing. The appellant was admitted to bail, 20th of July, but no grounds for the appeal have been filed. It is now 12 o'clock and only one of the vakeels is present. It appears that information was obtained through Mr. Hampton that these defendants (there are seven of them) were taking possession of Brahminee and Manick Peer bulls, gelding them and working the animals in their own fields, and the record and conviction shew that these animals were found working in the ploughs of the appellant. There is a conversion of the property to the use of appellant. Another prisoner Assanullah, in No. 150, defined him as an employé, on the part of the Municipal Commissioners, and Mr. Waters's letter, on record, admits that such perwannahs have issued for the seizure of these animals in the district of Baraset and Nuddea."

"Under this sanction, I make no doubt but that a business has sprung up, under which these defendants have founded a very remunerative vocation on their own account, and the Municipal department is doubtless the primary cause of the offence, with which the prisoner appellants have been charged."

"The vakeel for defendant maintains that it is not theft. A conversion of property to one's own use is or is not felonious as may be."

"In the Construction cited by the Joint-Magistrate of Baraset 803, the *animus* is to determine that point whether the animals were appropriated *animo furandi*, i. e. feloniously or not?"

"The only distinction between the Municipal Commissioners and these defendants that I can possibly draw, is, in the conversion of the property. In the former the animals are devoted to conservancy purposes. In the latter, to the tillage of Mozahir Mundul's fields. The Magistrate reports on information that several scores of animals have been released which had been pur-

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chased by different parties from the appellant. In imitation of the Municipal Commissioners, appellant set up business on his own account. It was matter of pure indifference whether the animals were *Dhurm Sars* (dedicated by Hindoos) or *Manick Peer Sars*, (dedicated by Mahomedans.)"

I think there is evidence of the "*mens rea*" constituting the felonious motive. As to the argument of no ownership in the animal and its appropriation not constituting a "theft." I have only to remark, that many parties are punished for theft of *Lawaris* property. But with these animals there is a property in the public and the supply of native stock is exclusively owing to this custom."

"I affirm the order of the Joint-Magistrate and dismiss the appeal."

*Remarks by the Nizamut Adawlut.*—(Present: Mr. H. V. Bayley.) Mr. Norris urges for the petitioner;

I. That the petitioner is not shewn by the evidence to be the owner of the fields where the cattle were worked, or to be connected with the men who were working them.

II. That his client is not shewn to have done any thing but buy cattle which the party alleging himself to be employed by the Municipal Commissioners sold to him; and that consequently the conviction is against the finding recorded in the judgments of the Joint-Magistrate and Sessions Judge.

III. That there is no ownership in cattle set loose for religious motives; consequently no such appropriation as to deprive any one (Government included) of ownership or right of property; thus, larceny cannot be charged or proved.

On the *first* point. The Magistrate's judgment records that the police found the defendants "in the act of ploughing Mozahir Moonshree's (i. e. petitioner's) fields, one Brahminee Bull gelded being actually yoked to the plough and five were standing by under the care of prisoners waiting their turn in the usual way; two more also gelded were found a little way off."

I think it is not for this Court to question this finding, which is one of fact, in a summary special appeal.

On the *second* point. The charge is theft; and the finding is theft, both by the Magistrate and the Sessions Judge as recorded in their judgments. I see no valid legal objection on this point.

On the *third* point. Construction 803, 5th July, 1833, page 196, (Carran's Edition 1855,) on the subject of ownership of Brahminee Bulls, rules that the fact of there being "no ownership in any individual, does not effect the criminality of the person who is alleged to have taken the bull, which must depend altogether on the *animus* by which he was actuated."

This I think would of itself render the third plea futile. But I further think that the original owner who released the

animals for religious purposes, only relinquished his property in them *to that extent*; and that a legal ownership is still with him, when a theft of them occurs as in the present case. It may be also a question whether there is not an ownership in the public, sufficient to militate against the validity of this plea. Irrespective of these points, the Construction cited, considered together with the stealing found by the Lower Courts, (v. col. 7 of Magistrate's Conviction Statement) renders the petitioner's plea on this third point untenable.

I reject the petition.

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Case of  
MOONSHEE  
MOZAHIR.

PRESENT :

H. V. BAYLEY, Esq., *Officiating Judge*.

No. 94 of 1857.

KALLY PERSAUD ROY CHOWDHREE, PETITIONER.

COUNSEL FOR PETITIONER, MR. R. T. ALLAN.

CRIME CHARGED.—Illegal assemblage.

*Abstract grounds of appeal*.—1st. The decision of the Sessions Judge is illegal, inasmuch as he has confirmed the Magistrate's order, though my mokhtear pleaded *alibi*, urging in my defence, originally before the Magistrate and then before the Sessions Judge, that I was on a pilgrimage. 2nd. It is very unjust on the part of the Magistrate to issue perwannahs in several zillahs for my apprehension and to pass an order for attaching my properties in such a trifling case though I am perfectly innocent and was ignorant of the case altogether. 3rd. It is the practice of the Court to allow defendants in such a trifling case to appear by mokhtear.

The facts of the case, as on the record here, are these. The Moonsiff of Bowful on the 19th March, recorded a *roobakaree*, which shewed that a large number of armed men on behalf of Bindabund Roy and of petitioner respectively, were collecting in different places in the neighbourhood, and that their appearance and proceedings had led to the villagers deserting their homes, and the business of the Court being stopped. The Moonsiff also considered it necessary to send away the Government cash of his Court. The Moonsiff sent a copy of this *roobakaree* to the Magistrate. It is to be presumed that a police report was sent to the Magistrate from the thannah at the same time. But that police report is not put in. Mr. Allan, however, as Counsel for the petitioner, has stated that it was upon a "mere police report" that the Magistrate in the first instance acted. On this, on the 23rd of March, the Magistrate required the attendance of peti-

Backergunge.

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Case of  
KALLYPER-  
SAUD ROY  
CHOWDHREE.

Appeal rejected. Remarks on Secs. 3 and 4 Reg. IX. of 1807; and the personal appearance of parties before a Magistrate.

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CASE OF  
KALLYPER-  
SAUD ROY  
CHOWDREE.

tioner through the police. On the 26th and 30th of March and 2nd of April, this order was repeated by the Magistrate. The petitioner was not to be found. On the 20th of April, the petitioner's makhbar applied to the Magistrate by petition to be allowed to give in a defence to the charge on account of which the petitioner had been required to attend through the police. That charge was "oppression of the ryots, with armed men, collected." The Magistrate on that date rejected the petition, stating that the petitioner's presence was necessary; and the Sessions Judge on appeal on the 7th July affirmed the order. The police were again ordered on the 19th July and 6th November to arrest and send in the petitioner, but he has hitherto not been apprehended. Mr. Allan urges: (1) that the offence charged is a bailable one under Section 3 and Section 6, Regulation IX. of 1807. (2) That consequently personal attendance is *not* requisite, under Section 3 and Section 6, Regulation IX. of 1807; and the precedent of Ramessur Mullick's case, April 7th, 1854, page 433, Nizamut Adawlut Reports, Part I. Vol. 4. (3) That Section 3, Regulation IX. of 1807, although it gives a Magistrate power to apprehend a party in other than *not* bailable offences, requires *the facts to be deposed to*; and that no facts were deposed to in this case. (4) That there is no authority for a statement of the Magistrate in his proceedings of April 20th, that the petitioner was repeatedly sent for; (*poono poono tulub.*)

## JUDGMENT.

On the *first* point I would observe that taking the offence charged as a bailable one, the law, in my opinion, still gave the Magistrate the power to issue an order for the petitioner's apprehension. Section 3 provides that in certain offences not bailable, or others, "*though not so expressly declared, involving such dangerous breach of the peace or degree of criminality as from the facts deposed to before the Magistrate may appear to require the immediate apprehension of the accused and to render the admission of bail unsafe and improper, on the truth of the charge being deposed to by the complainant or in the manner required by the following section*" "*the Magistrate shall issue a warrant to apprehend the person accused.*"

Section 4, provides that the terms of that Section 3, do not "*restrict a Magistrate from issuing process to apprehend a person suspected of having committed a heinous crime or for whose apprehension sufficient cause may appear upon the report of a police officer or upon any other credible information.*"

Thus, even were it necessary for the facts to be deposed to under Section 3, Section 4 gave the Magistrate the power to order the apprehension of the petitioner, for here there were both the "*police report*" and the "*credible information*" from the Moonsiff's proceeding.

It may be urged that if the Magistrate acted under Section 3, or Section 4, he was bound to show the grounds for his so acting, on the face of his order. I do not see that the law makes this indispensable, and I consider that the *credible information* furnished by the Moonsiff's proceeding shewed quite enough to warrant the Magistrate ordering the apprehension of the prisoner, in order to preserve the peace of the district, for which the Magistrate was responsible.

On the *second* point, I consider that the charge was not one of a "*misdemeanor which may not appear to require the immediate apprehension of the accused.*" The case of *Ramessur Mullick*, cited by Mr. Allan, was one in which the question was whether an accused person having given in his defence by an attorney must personally appear to receive sentence, or not ?

The *third* plea has been before disposed of ; and the *fourth* is contradicted by the record ; the dates of the repeated orders for appearance being given at the beginning of this judgment.

I see no reason to admit the summary special appeal, and reject it.

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KALLYPER-  
SAUD ROY  
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REGULAR CASES.

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DECEMBER,

1857.



REGULAR CASES.

DECEMBER, 1857.

PRESENT :

D. I. MONEY, Esq., *Officiating Judge*.

GOVERNMENT AND RAMGOTEE CHUNG  
CHOWKEDAR

*versus*

NOBEEN CHUNG (No. 2,) AND MUSSAMUT  
JOSHINA (No. 3.)

Dacca.

1857.

CRIME CHARGED.—(Prisoners Nos. 2 and 3,) 1st count, culpable homicide of Mussamut Probhatee, by administering medicine to cause abortion; 2nd count, causing abortion of Mussamut Probhatee by administering medicine; 3rd count, (No. 3.) being accessory to the above charges before and after the fact.

CRIME ESTABLISHED.—(No. 2,) causing abortion by administering medicine; No. 3, being accessory before and after the fact to the crime of causing abortion by administering medicine. The record of this case was called for by the Nizamut Adawlut. Held by the court that there was nothing illegal or irregular in the conviction of the prisoners by the Sessions Judge, though the sentence was a lenient one. The sentence was amended in consequence of the Sessions Judge having omitted to commute the labor, to which he had sentenced the prisoners, to a fine under the provisions of Cl. 1, Section 3, Regulation II. of 1834.

Committing Officer.—Baboo Joy Chunder, Deputy Magistrate of Manickgunge.

Tried before Mr. R. Abercrombie, Officiating Sessions Judge of Dacca, on the 12th September, 1857.

*Remarks by the Officiating Sessions Judge.*—The two eyewitnesses to the crime have denied at the Sessions the statements made by them on oath before the Deputy Magistrate. They have been directed to be committed for perjury. Their object was doubtless to screen prisoner No. 2, Nobeen Chung the brother of one and son of the other. There is no medical evidence in this case. The body of deceased was too far decomposed to admit of a *post mortem* examination by the Civil Surgeon.

Both prisoners confessed\* before the Police and repeated their admissions of their guilt before the Deputy Magistrate of Manickgunge. The substance of both their confessions is that Nobeen Chung† had been carrying on an intrigue with the deceased Mussamut Probhatee for about a year, which resulted in her becoming pregnant. When she was three or four months advanced in her pregnancy, the prisoners became afraid of the consequences likely to arise from the disgrace they would be subjected to, should the woman be delivered of an illegitimate child. First

\* No. 2, Nobeen Chung.

„ 3, Mussamut Joshina.

† Prisoner No. 2.

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Case of  
NOBEEN  
CHUNG and  
another.

\* Prisoner No. 3.

† Prisoner No. 2.

Mussamut Joshna,\* the mother of the deceased, gave her some medicine for the purpose of procuring abortion but this dose failing to take effect Nobeen Chung† administered a second, which was successful and brought on a miscarriage the following morning. The foetus was conveyed away by the female prisoner in an earthen pot, and concealed. After this deceased became ill and growing daily worse died in about six weeks. Before the Police the prisoners admitted that death was the consequence of the miscarriage, but this they deny before the Magistrate stating that she died of fever.

At the Sessions both prisoners deny their guilt and their previous confessions. The male prisoner‡ pleads an *alibi* but does not attempt to prove it. Their witnesses depose to nothing in their favor, on the contrary their evidence tends rather to criminate the prisoners.

The Law Officer pronounces the male prisoner guilty of causing abortion by administering medicine, and the female prisoner of being an accessory to the crime before and after the fact.

I concur in this verdict and sentence Nobeen Chung, prisoner No. 2, to two years' imprisonment with labor, and Mussamut Joshna, prisoner No. 3, to one year's imprisonment with labor suitable to her sex.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Money.) I perceive nothing in this case in the *conviction* of the Sessions Judge, which is illegal or irregular, although I consider the *sentence* to be a lenient one for such an offence.

The prisoners were charged on the 1st count, with "culpable homicide by administering medicine to cause abortion." The Judge finds one of them guilty only of "*causing abortion by administering medicine*," and the other as an accessory to the crime before and after the fact, and this finding is strictly borne out by the prisoner's confessions, independently of the medical evidence, which could not be had in consequence of the decomposition of the body of the deceased. The medical evidence was only wanting to prove that death was caused by the administering of the medicine, but this is not found by the Judge. Otherwise, doubtless, he would have convicted on the higher charge. It was not wanting to establish the minor offence which was proved by the confessions. The Sessions Judge however has omitted to commute the labor, to which he has sentenced the prisoners, to a fine under the provisions of Clause 1, Section 3, Regulation 11. of 1834. His sentence is consequently amended, and the prisoners will be exempted from labor, upon the payment of a fine of 20 Rs. each within one month, or in default will be subjected to labor until the fine is paid, or if not paid until the completion of the term of the sentence agreeably to the law cited.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

MUSST. DYONEE (No. 9,) RAMNARAIN PAL (No. 10,) MUSST. SHORBO JOYAH (No. 11,) AND MUSST. JOYMALLAH (No. 12.)

Tipperah.

CRIME CHARGED.—Nos. 9 to 11, charged with the wilful murder of Musst. Fezzee by the administration of drugs and noxious things for the purpose of causing abortion.

1857.

No. 12, accessory before the fact to the administration of drugs and noxious things to Musst. Fezzee for the purpose of causing abortion.

December 5.

Case of  
MUSST.  
DYONEE and  
others.

Committing Officer.—Mr. F. B. Simpson, Officiating Joint-Magistrate of Noakolly.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah, on the 26th October, 1857.

Two of the

*Remarks by the Sessions Judge.*—The deceased, a young and healthy widow of sixteen or seventeen years of age, became pregnant by her sister's husband. Her father, the prisoner Ramnarin Pal (No. 10,) and mother, the prisoner Musst. Shorbo Joyah (No. 11,) anxious to avoid the exposure and discredit consequent on such an intrigue becoming known, had recourse in the first instance to the prisoner Musst. Joy-mallah (No. 12,) who gave them a piece of a root called *anchitta* and some arsenic, which she desired them to mix and administer to the deceased. They did so but no result followed, and four days afterwards they applied to the prisoner Musst. Dyonee (No. 9,) who supplied them with a minute pill of mercury which was given to the deceased to swallow, and subsequently herself applied a piece of the *lall chitta* root to the vagina, the speedy effects of which were a flow of blood and expulsion of the fœtus.

prisoners convicted of culpable homicide by administering drugs for the purpose of causing abortion, sentenced to fourteen years' imprisonment with labor; another convicted of the same to fourteen years' imprisonment with labor *in irons*, and a fourth convicted of accessoryship before the fact to such administration purpose sentenced to seven years' imprisonment with labor.

The deceased died on the fourth day after this cruel operation, the frequency of which is a lamentable feature in the history of crime in this part of the country.

The prisoners confessed both at the thannah and before the Joint-Magistrate to the share taken by each in this transaction, entering fully and unreservedly into the motive for, and manner of, effecting it.

Remarks by the Court as well as the Sessions Judge regarding the

The body was opened by Dr. Davis who succeeded in extracting the womb, which he found had evidently been in a state of impregnation, and in the neck of which he discovered a substance of a highly irritating nature, called *lall chitta*. The ap-

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Case of  
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others.

heinous nature and prevalence of the crime, and the difficulty of suppressing it, so long as the compulsory state of continued widowhood is maintained or encouraged by the Hindoo community.

plication of this root had caused a highly inflamed state of the parts, and Dr. Davis was of opinion that death resulted from the injuries inflicted on the genital organs by the introduction of this substance, and from the effects of abortion caused thereby.

This case affords a striking instance of the evils attending the, until recently, compulsory state of continued widowhood among the Hindoo community. The deceased lost her husband when six years of age. Precluded from contracting marriage a second time and thrown into intimate association with the husband of her younger sister, the instincts of nature were too strong for her to resist, and she yielded. The usual results followed, pregnancy in the first instance, abortion and death in the next. And this is the history of nine out of ten cases of the kind which come to the knowledge of the Courts. How many occur unknown and unnoticed, it is impossible to guess, but many, they doubtless are.

The case for the prosecution was supported by the confessions of the prisoners already alluded to, and by circumstantial evidence to the intrigue, its results, the measures adopted to cause abortion, and the woman's death in consequence.

The prisoners pleaded *not guilty*, Musst. Dyonee (No. 9,) stated in her defence that she had certainly given a vegetable substance which she called "*bunpolia*" to be administered to the deceased who applied it locally instead of taking it internally, admitting however that she, the prisoner, was present when blood flowed from the parts, as a consequence of the application. She called two witnesses into Court to speak to her not being in the habit of giving medicines for such iniquitous purposes, their evidence amounted simply to ignorance whether she was so or not. Ramnarain Pal (No. 10,) stated that he had no intention to injure his daughter. What he had done he did to preserve his caste, and with no clear knowledge of the nature of the drugs administered to his daughter by Musst. Dyonee (prisoner No. 9,) and Musst. Joymallah (prisoner No. 12.) He added that the deceased had been ill from fever for some time before her decease. He called no witnesses, and, I would observe that Dr. Davis considered the body to be that of a person in general good health prior to decease. Musst. Shorbo Joyah (No. 11,) pleaded that her daughter had prepared herself whatever medicine she used or took, and that Musst. Joymallah (prisoner No. 12,) administered or applied it; Musst. Joymallah (No. 12,) pleaded that she was prevailed upon by the entreaties of Musst. Shorbo Joyah (prisoner No. 11,) to give the latter a little root of the *chitta* which however had not injured the deceased.

The Mahomedan Law Officer convicted the prisoners Musst. Dyonee (No. 9,) Ramnarain Pal (No. 10,) and Musst. Shor-

bo Joyah (No. 11,) of the culpable homicide of the deceased by the administration of drugs for the purpose of causing abortion, and Musst. Joymallah (No. 12,) of accessoryship before the fact to such administration with the above purpose, and declared them liable to *tazeer*.

In this finding I concur, and with reference to the sentences passed by the Sudder Court in the instances noted in the margin,\* and to the grounds on which it was considered expedient to pass such sentences, I refer the present case also to the judgment of the higher Court, recommending that the prisoners Musst. Dyonce (No. 9,) and Musst. Shorbo Joyah (No. 11,) should be sentenced to fourteen (14) years' imprisonment each with labor suited to their sex, Ramnarain Pal (prisoner No. 10,) to a similar period of imprisonment with labor in irons, and Musst. Joymallah (prisoner No. 12,) who is morally as guilty as the rest, although her medicine failed of equal success, to seven (7) years' imprisonment with labor suited to her sex.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Money.) The whole particulars of this case have been very clearly and correctly stated by the Sessions Judge.

The guilt of the prisoners is established beyond a doubt by their own full and voluntary confessions at the thannah and before the Joint-Magistrate, the *post mortem* examination of the body by the Civil Surgeon, and the circumstantial evidence regarding transactions, which led to the crime, and resulted in the death of the deceased.

The Sessions Judge convicts the prisoners Nos. 9, 10 and 11, of culpable homicide of the deceased by the administration of drugs for the purpose of causing abortion; and the prisoner No. 12, of "accessoryship before the fact to such administration with the above purpose," and with reference to the sentences passed by this Court, in the two cases cited by him, on the 15th September, 1856 and the 14th March, 1857, recommends that the former should be sentenced to fourteen years and the latter to seven years' imprisonment.

There are two other cases of a similar character in which a sentence of imprisonment for fourteen years has been inflicted by this Court, viz. that of Kanto Dullye, 10th February, 1857, and Kalachand Sount, 25th August, 1857.

In the case of Kanto Dullye the Sessions Judge recommended a severe sentence on the grounds of "the known frequency of

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the offence, the facility with which detection is eluded, the fearful trifling with life, and the fatal result."

In the case\* of Kalachand Sount, tried by Mr. Trevor and myself, the Court remarked, "The crime of procuring abortion is one of increasing occurrence in this country, and thought too lightly of by those who perpetrate it, and has not been punished by our Courts with the severity, which so foul an offence, and the fatality generally attending its perpetration, seem to us imperatively to require." The prisoner was convicted of aggravated culpable homicide and sentenced to imprisonment for fourteen years.

Mr. Beaufort in his digest of the criminal law, has correctly stated that there is no specific provision in any of the regulations for the offence of causing or procuring abortion, and that by the Mahomedan Law it does not amount to murder, if the woman die from the means used to procure it.

I have long considered this crime as one of a very heinous character, for the suppression of which the lenient punishment for many years inflicted by this Court has been clearly inadequate.

It is constantly perpetrated and but seldom brought to light. Loss of caste and sense of shame are powerful incentives to its concealment, and there is no difficulty in concealing it in the seclusion and secrecy of the Zenana. The richer the criminal the safer the crime. Professional Dhaies are employed to administer drugs for the purpose of procuring abortion who obtain a livelihood from the abominable trade. The administration causes in every case the extinction of the embryo life in the womb, and in many cases, either from delay in the application and the consequent maturity of the fœtus, or the ignorance of the practitioner and the extra violence of the poisonous stimulant, the death of the parent.

The crime cannot be checked, and would seem, judging only of the cases brought to light in the Tipperah zillah, to be on the increase. There can be no hope of suppressing it to any extent so long as "the compulsory state of continued widowhood" is maintained or encouraged by the Hindoo community. Mr. Metcalfe's remarks upon this point are very pertinent.

I concur in the conviction of the prisoners by the Sessions Judge and sentence them, as recommended by him, the prisoners Nos. 9 and 11, to fourteen years' imprisonment with labor, the prisoner No. 10, to the same with labor in irons, and the prisoner No. 12, to seven years' imprisonment with labor.

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\* This was not printed in the Nizamut Reports.

PRESENT :

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

NOBINCHUNDER GHOSE.

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nahs.

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Case of  
NOBINCHUN-  
DER GHOSE.

CRIME CHARGED.—Wilful perjury in having on the 26th August, deposed under solemn declaration taken instead of an oath before the Hon'ble A. Eden, Officiating Joint-Magistrate of Baraset that his father Bishonath Ghose is not the brother of the prosecutor Gungaram Ghose, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer.—Hon'ble A. Eden, Officiating Joint-Magistrate of Baraset.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Hooghly, on the 10th November, 1857.

*Remarks by the Officiating Additional Sessions Judge.*—The facts of the case are these : the prisoner was examined as a witness in a case of assault, and was asked whether he was the nephew (brother's son) of the complainant. He replied in the negative, but enquiry showed that he is. Before the Joint-Magistrate he stated in his defence that he was confused when he denied his relationship ; but that plea is refuted by the Joint-Magistrate, who certifies " that seeing him hesitate, I myself asked him three times slowly and deliberately. *Each time* he said my father and Gungaram Ghose (complainant) are not brothers."

The prisoner convicted of wilful perjury sentenced to five years' imprisonment with labor in irons. Held that the false statement was material to the issue, inasmuch as it was intentionally given by the prisoner to deceive the court, and affected the credibility of his evidence.

At the Sessions the prisoner pleads *guilty*. His deposition has been duly proved,\* and

\* Wit. No. 4, Kistomohun Bose witness No. 1, proves that the Mahafez. prisoner is a nephew of Gungaram Ghose. Two other witnesses are entered in the Calendar to prove that fact, but as it is undisputed, I do not consider it necessary to examine them.

The *futua* of the Law Officer convicts the prisoner of the crime of wilful perjury, and declares him liable to *tazeer*.

That the prisoner wilfully and deliberately made a false statement, I have no doubt. But to constitute the crime of perjury, the false statement must be material to the point in issue. The fact of the relationship of the witness to the complainant would not in itself be likely to induce the Joint-Magistrate to give less credit to the substantial part of the witness's evidence. Believing therefore that the false statement was not material to the point in issue, I would acquit the prisoner.

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*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Money.) The Sessions Judge finds the prisoner guilty of wilfully and deliberately making a false statement but considers it not material to the point in issue, and therefore not constituting the crime of perjury.

If the statement intentionally and deliberately made by the prisoner is not wilful perjury, I am at a loss to understand in what such an offence consists.

In cases of a somewhat analogous character the Sessions Judge may possibly find the support of authority for the conclusion at which he has arrived, but it appears to me that it would amount almost to a legal quibble to assert in *this* case that the statement made by the prisoner was not in a matter material to the issue, such statement convicting him of *falsehood*, and consequently rendering his *whole* testimony *liable* to discredit from an untruth in *one* particular. The probable consequence of such a statement would be a belief in the mind of the Judicial Officer, before whom it was made, that as the witness has spoken falsely in one point, he may have spoken falsely in all. "*Falsum in uno, falsum in omnibus.*" The statement was intentionally given by the prisoner, to deceive the Court, and must of necessity in some measure affect the credibility of his evidence.

I concur with the law officer in convicting the prisoner of wilful perjury, and sentence him to imprisonment for five years with labor in irons.

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PRESENT :

H. T. RAIKES, Esq., *Judge*, D. I. MONEY,  
AND H. V. BAYLEY, Esqs., *Officiating Judges*.

GOVERNMENT AND CHYMFOO

*versus*

GNATOOK.

Arracan.

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Case of  
GNATOOK.

CRIME CHARGED.—1st count, theft of property valued at Rupees 10-12-0, from the house of Chymfoo; 2nd count, murder of Munsoor Ally having stabbed him with a knife, while he was endeavouring to arrest him on the morning of the 9th November, 1855, at 2 A. M.

Committing Officer.—Mr. F. Shepherd, 2nd Principal Assistant to the Commissioner of Arracan at Akyah.

Tried before Major G. Verner, Officiating Commissioner of Arracan, on the 16th of October, 1857.

*Remarks by the Officiating Commissioner.*—The particulars of the case are as follows: Minotoollah police duffadar together with Munsoor Ally, Seereedun and Mootie Sing burkundazes, whilst going night rounds saw the prisoner and four others near Ongree's house on the 9th November, 1855, at one or two o'clock A. M. they passed on, but after doing so, it struck them, the five could be after no good, so they returned, and saw the five again, and in prisoner's hands some things, they asked who he was, he answered "me," threw the things down and ran away, the police after him, Minotoollah came up with him first and caught the prisoner by the hand, who stabbed him in three places with a knife, Minotoollah fell, Munsoor Ally came up with him next, and caught the prisoner, who wounded him in four places, and he fell, after which, the other two burkundazes caught him and tied his hands and feet, and others coming, they sent to the thannah, and the Darogah came; the knife with which the wounds were inflicted, was picked up, covered with blood.

Minotoollah duffadar recovered from the wounds he received, though one of them was very dangerous.

Munsoor Ally burkundaz died in hospital next day, from the effects of the wounds he received, one stab having penetrated into his heart.

On the 7th December, 1855, before the case was ready for trial, the prisoner escaped from jail, but in April last, he was retaken at Prome, recognized, and sent back here, and was committed to take his trial on the 26th ultimo.

The knife with which the wounds were inflicted was sold, and is consequently not produced in Court.

The prisoner convicted of wilful murder and sentenced to capital punishment. Held by the majority of the Court that as the prisoner recklessly and repeatedly stabbed the deceased, while he was in the execution of his duty under the protection of the law, it did not require "previous enmity" to convert the homicide into wilful murder, and it was beside the question to enquire whether the prisoner entertained any "malignant design to take life."

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The prosecutor named in the margin\* deposes to his property, valued at Rupees 10-12-0, having been stolen on the 9th November, 1855, and to his finding it again in the morning at the thannah, the property in Court is that which was stolen and is his.

\* Chymfoo, prosecutor.

The prosecutor named in the margin† accuses the prisoner of theft, and with having wounded Munsoor Ally with a knife, which caused his death.

† Keojinnee Vakeel, Govt. prosecutor.

The prisoner named in the margin‡ pleads guilty to the first count of the charge. He also pleads guilty to the 2nd count of the crime charged; to the extent of stabbing, but not with intent to kill.

‡ Gnatook prisoner.

The witnesses named in the margin§ depose to having gone rounds with Minotoollah duffadar, and Munsoor Ally burkundaz deceased, to the prisoner having wounded the duffadar and Munsoor Ally, and to their having come to their assistance, and caught and tied the prisoner, also to the finding of the bloody knife on the ground, and to the finding another knife, and an instrument for opening boxes, on the prisoner's person.

§ Wit. No. 2, Seercedun.  
" " 2, Mootie.

The witnesses named in the margin|| depose to having come up, and seen the two men wounded on the ground, and to the prisoner being held down by two burkundazes Nos. 2 and 3 witnesses. Shabo No. 4, went to the thannah, to inform the Darogah of what had taken place, they also saw the bloody knife found, and the other knife and instrument taken from the prisoner's person.

|| Wit. No. 4, Thabo.  
" " 5, Tuyonrhee.

\* Wit. No. 6, Dr. Mountjoy, Civil Assistant Surgeon. This witness\* deposes to the wounds inflicted on the duffadar and on Munsoor Ally, the death of the latter being caused by the wound he received.

† Wit. No. 7, Minodoway.  
" " 9, Huyn-la-way.‡ Wit. No. 11, Tharee.  
" " 12, Hyder Ally.

The witnesses† named in the margin‡ depose to the prisoner's having confessed voluntarily at the thannah.

These two witnesses depose to the voluntary confession of the prisoner, in the foudjary Court, before the Magistrate.

§ Wit. No. 13, Mong Dowkey.  
" " 14, Mong Pey.

The two witnesses named in the margin§ prove Chymfoo's right to the property which was stolen.

The depositions of Minotoollah duffadar and of Munsoor Ally

burkundaz, the former since dead, the latter who died the day after he was wounded were both taken in hospital, and both deposited to the wounds they received, having been inflicted by Gnatook the prisoner.

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The prisoner\* in his defence said, the confessions he made in the thannah and foudary, were correct, that he wanted to get off, and that trying to do so, with the knife in his hand, the duffadar and Munsoor Ally were wounded. He produced no witnesses.

By the evidence and the prisoner's confession, I consider both counts of the crime with which the prisoner stands charged, of theft, and secondly, of the murder of Munsoor Ally proved, but as the object of the prisoner, when inflicting the wounds, must have been to effect his escape, and not be apprehended, and as there was no enmity between the parties, I submit the case for the orders of the Sudder Court of Nizamut Adawlut, and recommend that the prisoner be sentenced to imprisonment in transportation with hard labor in irons for life.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. H. T. Raikes, D. I. Money and H. V. Bayley.)

*Mr. D. I. Money.*—The particulars of this case have been fully and correctly given by the Officiating Commissioner.

It is proved by clear and consistent evidence, as well as his own confession, that the prisoner, after committing a theft, encountered some Police Officers, amongst whom were Minotoollah, a Police duffadar, and Munsoor Ally, a Police burkundaz; that upon seeing them and being questioned he dropped the stolen property and ran away; that upon Minotoollah coming up with him and capturing him by the hand he stabbed him in two places with a knife; and that when Minotoollah fell, and Munsoor Ally came up and caught him, he stabbed Munsoor Ally also in four different places; and that Munsoor Ally died from the wounds inflicted the following day. There never was a clearer case of a thief, when caught, stabbing right and left recklessly at all hazards. Minotoollah providentially survived his wounds, although one of them according to the medical testimony was very dangerous, penetrating into the abdomen and verging on a mortal wound.

Of the four wounds inflicted upon Munsoor Ally the medical testimony describes one of them as dangerous, passing under the left shoulder blade and wounding the lungs, and another on the left side, where the knife had entered the envelope of the heart, as the mortal wound, which caused his death.

The Officiating Commissioner recommends that the prisoner be sentenced to imprisonment in transportation with hard labor in irons for life, on the ground that "the object of the prisoner when inflicting the wounds, must have been, to effect his escape,

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and not be apprehended" and because "*there was no enmity between the parties.*"

I see nothing in the act of the prisoner to extenuate the guilt of murder, or to entitle him to exemption from the extreme sentence of the law. The deceased was in the actual execution of his duty under the special protection of the law. The prisoner in resisting him, when apprehended, became the aggressor in the eye of the law. The reckless and desperate use of the lethal weapon betrayed a murderous intention. It did not require "*enmity between the parties*" to convert the killing into murder. I look upon the act, in the desperate and haphazard reckless manner in which the knife was plunged into the body of an officer so employed, as murder of malice prepense, and that it is an aggravation of the crime that it was committed in determined and violent resistance to legal authority. I would therefore sentence the prisoner to capital punishment.

*Mr. H. V. Bayley.*—The facts of this case are succinctly but clearly stated by the Commissioner from paragraphs 3 to 7 of his letter of reference; and the material evidence for the prosecution from paragraph 8 to the end of the letter. The evidence of the Civil Surgeon clearly shews "the stab in the heart" to have been the cause of death. The testimony of witnesses Nos. 1, 2, 3 and 4, and of the deceased, and the prisoner's own confessions fully prove that the prisoner made that stab. The evidence of the witness No. 1 and of the deceased is only on the Foujdary record; the former having died of illness, and the latter of his wound before the Sessions trial.

Thus, the question to be decided by this Court is, what measure of punishment should be awarded against prisoner?

The Commissioner recommends that "as the object of the prisoner when inflicting the wounds must have been to escape, and not be apprehended, and as there was no enmity" the prisoner should be transported for life with hard labor in irons.

I concur in this sentence; but not exactly for the above reasons.

The practice of this Court has been not to pass a capital sentence, where no *malignant design* to take life is shewn.

In this case the prisoner's own confessions distinctly deny such design, or the design to take life at all. It remains to see how far this denial is borne out by the direct evidence for the prosecution, or by the circumstances of the case.

Both that evidence and those circumstances shew that there was no previous design; nor enmity; that the prisoner on being pursued and taken on a dark-night, with a knife which he had in his hand, stabbed the deceased, and witness No. 1:—in the case of the first fatally, and in that of the second, dangerously. Unfortunately (and improperly) the instrument had been sold

before the trial; and no precise evidence as to its size or character is available. (Vide page 7 of Commissioner's letter.) From the medical testimony as to the size and nature of the wounds, it seems to have been one of no extraordinary kind. The deceased called it a "*chota choori*," those words being written over the word "*dhao*" erased; and deceased subsequently stated that he could not recognize the knife, (shewn to him) as in the darkness he did not at the time see it.

Referring to the above reasons, I would sentence the prisoner to be transported for life with hard labor in irons.

*Mr. H. T. Raikes.*—This case has been referred to a third Judge only as to the measure of punishment to be awarded.

It appears that the deceased who was a police officer and at the time proceeding on the rounds with other police officers attempted to arrest the prisoner who, having been challenged, threw some articles of property on the ground, and fled.

The prisoner had committed a theft and a burglary, and admits that he fled from the Police to escape apprehension, and stabbed with his knife two of the first who laid hands upon him.

The prisoner was therefore well aware why the police so acted and moreover, that he was liable to be arrested, and that the officers who pursued him for that purpose only did what their duty required them to do.

Under such circumstances when one of those officers died from the wounds inflicted by the prisoner it seems to me quite beside the question to enquire whether the prisoner entertained any "malignant design to take life," nor can the presumed absence of any such design be allowed any weight as an extenuating circumstance to qualify in any degree the guilt of the prisoner.

I concur with Mr. Money, in sentencing the prisoner to capital punishment.

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Case of  
KASSEE  
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another.

PRESENT:

D. I. MONEY AND G. LOCH, Esqs., *Officiating Judges.*

GOVERNMENT

*versus*KASSEE SINGH (No. 1,) AND JUGGURNATH  
SINGH (No. 2.)CRIME CHARGED.—1st count, wilful murder of Madhub-  
chunder Dutt; 2nd count, being accessaries before and after the  
fact.The prison-  
ers convicted  
upon their  
own voluntary  
confessions,  
supported by  
the circum-  
stantial evi-  
dence, of the  
wilful murder  
of Madhub-  
chunder Dutt,  
and sentenced  
to suffer death.  
The Local Police of Hooghly, totally failed to trace the mur-  
derers.Committing Officer.—Mr. S. Wauchope, exercising powers  
of Magistrate in Hooghly.Tried before Mr. E. Latour, Sessions Judge of 24-Pergun-  
nahs, on the 17th November, 1857.*Remarks by the Sessions Judge.*—On the night of the 29th  
of December, 1855, Madhubchunder Dutt, a rich and wealthy  
inhabitant of Chinsurah, arrived at the Hooghly Railway Sta-  
tion at 7½ P. M. He proceeded thence in a hired conveyance,  
in company with Sreenath Mullick his son-in-law, witness No.  
1, and witness No. 2, Dyal Khansamah, when they had proceed-  
ed a short distance, at a spot called Jeebon Pall's garden, the  
carriage was attacked by a gang of armed ruffians, Madhub  
Baboo was shot dead inside and a lad by name Beeprochurn  
Dutt, who was on the coach-box, said to be the Baboo's servant,  
was also shot and died of his wounds, on the following day,  
after giving a brief statement to the Police and Magistrate of  
Hooghly, who noted that he was in intense agony and died in  
about an hour afterwards.The Local Police of Hooghly, totally failed to trace the mur-  
derers.The way in which they were arrested will be best described  
in the confessions of the two prisoners, and it will be most ex-  
pedient, to give their confessions in this place although it may  
be apparently rather premature to do so, but this case will be  
best explained by proceeding at once in *medias res*. I will ab-  
breviate the narrative only, so far as to secure its essential  
fidelity.

The confession of the prisoner No. 1, is in these terms.

States, "that the Jemadar of Grudoss Baboo asked him if  
he would take service with him in the Soonderbuuns, to which he  
replied, that service was his profession. On this he was told to  
be ready within a day or two. The day following, he said to  
him that four or five stout fellows will be wanted to-morrow, to  
be engaged at 4 annas a head. The prisoner spoke to Juggur-  
nath (prisoner No. 2,) and Sobdan a man of great physical  
power. They asked how the opening presented itself and were

told by the prisoner that Gunnese and Mungul Singh, had spoken about it. That, Gunnese and Mungul Singh three days afterwards, with Juggurnath, Kasee, Sobdan and Callee Singh went to Kally Ghaut, performed the usual bathing ceremonies and then Gunnese and Mungul Singh said to the prisoner they had something to say to him. The prisoner replied what can you have to say to poor men like us? They proposed to him to take the oath by *Kalee*, which was accordingly taken. He was bound to secrecy. He was told there was a murderer at Chinsurah, if we killed him we should have a lac of Rupees. The prisoner told Juggurnath, who, on hearing this proposition, struck him with his shoes, and said, pig, is this the sort of money you feed upon? better live by honest labour. Thereupon Gunnese and Mungul dropped the subject and went and reported matters to Baboo Grudoss of Colootollah, the son of Madhub Baboo, who threatened them, for having made such overtures and directed them to reconcile matters with us, lest we should betray him. Then Gunnese and Mungul proposed to us to come to Chandernagore; that it was a mere *dunga* or disturbance they were required to create, not a murder, and accordingly took him, Juggurnath and Sobdan in the first instance to Chinsurah and seated us at a ghaut by the river-side, whilst they, Gunnese and Mungul went some where. On their return, they said the Baboo did not require their services immediately, but that we were to have our rations, as he was not going to the Soonderbuns just yet, but that we should be regularly engaged, one hundred Rupees was then paid to them for subsistence (*khorahee*). They remained, and went here and there, at option. Finally engaged lodgings with Juddoo Pall at the Toll Diggy, in Chandernagore, and Gunnese and Mungul went down to Calcutta. Four days after this, Mungul came to our lodging, and told us we might be wanted at any moment and were on no account to leave. We mentioned that none of us were cooks, and were put to much inconvenience on this account. So they sent up to us from Calcutta one Purbhoo Pattuck as a cook, to be paid by the Baboo Grudoss. Purbhoo would enquire about the murder, to which we would answer, that they were only entertained to create a disturbance not a murder and not to be uneasy on that head.

“Gunnese and Mungul then returned to Calcutta. When they next came, they said, that Grudoss Baboo states that his enemy lived at Chinsurah. If we killed him, it would be permanent livelihood for us. We said if we find ourselves equal to the job, we will do it, if not, then we will not attempt it, upon this, Gunnese took him to Madhub Dutt's house and placed him in the garden and went in himself with a bag of money, warning him, the prisoner, that the Baboo would soon make his appearance, as it was the time when he ordinarily walked in the gar-

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den and there he, Gunnese would point him out and he, the prisoner, must then acquaint himself with his person. As Gunnese was going in, Madhub Baboo was coming out, and Gunnese addressed him, and asked where he was to pay in the money and was told to pay the money into the Treasurer's hands. After this Gunnese took him, the prisoner, back to Chandernagore, and Sobdan and Juggurnath asked where he had been taken and the prisoner narrated the particulars. They said they had received neither money, nor any security for its payment, without one or other of which they were not going to embark in the business, to which Mungul and Gunnese replied, that they would go and see Baboo Grudoss about the matter, and accordingly went to Calcutta, and reported how matters stood, to which the Baboo made answer that he was not going to pay beforehand, for they would take the money and run away. Mungul and Gunnese said they would be responsible to him, that the job should be done, but the Baboo said that the job must be done first. So Gunnese came back to us at Juddoo Pall's and Juggurnath and Sobdan abused him, subsequently he took away from Purbhoo Pattuck's possession the pistol in Court and 26 Rupees, and two swords larger than the ones in Court, which Purbhoo mentioned to us, and Juggurnath was greatly annoyed at this and said he would kill Gunnese for it. The latter went to Calcutta and told the Baboo, we were a set of Poltroons and thought of nothing but women and debauchery, to which the Baboo observed he had made a great error in trusting his secret to such a set of fellows and that he must manage the matter as best he could, or that he would stuff his skin with straw. Then Gunnese and Mungul came and reported this to us at Calcutta at Bukhead's house, and told us, that we might as well cut their (Gunnese, Mungul, Kallee) heads off at once, if they would not do the job, but still we declined, which was reported to the Baboo, who struck Gunnese two blows with a whip and Mungul four.

"Whereupon they came back to us and told us we were a parcel of women and we ought to wear a female's dress. Then we, Kaseenath, Sobdhan, Kallee and Juggurnath, Gunnese and Mungul all set out by Rail and arrived at Juddoo Pall's when they gave us 25 Rs. Eight days after this Gunnese came with a quantity of money carried by a cooley to Chinsurah and paid it on to Madhub's treasury, and Madhub Baboo said he was going to Calcutta in two days, and accordingly proceeded to Calcutta by Rail on the second or third morning, Gunnese and Mungul then said, he must be murdered to-day. On this Gujjadur Singh (who is this prisoner's uncle) came to him and said let Gunnese and Mungul murder him. Why should we do it, as he had neither been paid, nor received any security for pay-

ment and have not become acquainted with the person of Madhub Baboo. Gujjadhur then went back to Calcutta, Gunnese, Mungul and Gujjadhur, then started with the Baboo from Calcutta and the prisoner Juggurnath and Sobdan went to the Railway Station toddy-shop, prisoner had the pistol and sword. Their intention was to see the murder *tamasha*, prisoner had a carbine and Juggurnath also a *tulwar* and *lattee* (here Juggurnath interrupted the prisoner and stated that he had the pistol himself.) The three there sat down at the rice-field *bugecha* (orchard), Juggurnath went aside to ease himself, the prisoner was preparing *gunjah* when at about 7½ p. m. the Train came in, Mungul then came and said, the Baboo is coming, kill him, but he refused, as he had not been paid and had no security for payment. There are branch roads, one going to Chinsurah, another to Chandernagore facing the Jeebon Pall *bugeecha*; a *garrie* with a pair of horses was coming along. Mungul said, the Baboo was in the *keranchi*. That there was a box inside with 10,000 Rs. in it, kill the Baboo and carry off the money which the prisoner refused, so Mungul threw him down and took his carbine away from him and went up to the Baboo's carriage and shot him and Gunnese took the pistol and fired into the carriage and others struck the carriage here and there with swords. It was a dark night. After this the prisoner Juggurnath and Sobdan and Gujjadhur said, let us make our escape or we shall be involved in the punishment, Gunnese and Mungul got into the other carriage which was in advance. So Sobdan ran after him and laid hold of Gunnese and snatched the pistol from him. They then made their escape and went to Tarakesor; five days afterwards went down to Calcutta to Bukhead's house. One Sheebdyl Pandey, who was employed at the Balighat and discharged and then employed by Baboo Grudoss and again discharged, gave information against us and stated that Kalee, Gunnese, Mungul and Gujjadhur had committed the murder together with the prisoner and Juggurnath. Juggurnath the prisoner and Sobdan were not arrested, but Gunnese, Kalee, Gujjadhur and Mungul, were taken to Hooghly, and discharged, Grudoss sent Gunnese for us (the prisoner Juggurnath and Sobdan.) We told Gunnese that we had only to give information and we should have 5000 Rs. Gunnese replied take that from his Master Grudoss and say nothing about it."

He then gave them gold an *ingot* said to be worth 1000 Rs. sovereigns and mohurs to Juggurnath, in all value 5000 Rs. to be divided. After this departed *via* Budge Budge, Oolooberiah, to Lucknow; spent some of the gold at Juggurnath and in different places and different ways. Returned from Lucknow to Calcutta to Seetul Singh, Surjoo Baid having at Lucknow told this prisoner that orders had arrived for his arrest, placed the pistol and swords with Seetul Singh and went to the house of

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Baboo Grudoss, where Devy Singh is jemadar, and told him he wished to see Baboo Grudoss; that a warrant was out for his arrest and that he required 15,000 Rs., otherwise he would give information and clear himself of this charge. Accordingly Devy Singh reported that Kasseenath and Juggurnath had arrived and Baboo Grudoss denied all knowledge or acquaintance with them, so, we (Juggurnath and Kassinath) returned to Seetul Singh, who said come again to-morrow. Then I (Kassinath) proposed to go to the Police at once, but Juggurnath said, the Magistrate will not sit till 10 A. M. to-morrow. Then Seetul called the chowkeedar and had us arrested, I, Kassinath, shook him off and escaped, Juggurnath was secured next day returned. They had taken Juggurnath to the Larkin's thannah (Mangoe lane, Police Station) accusing him of stealing the chowkeedar's *lattee*, went to Baboo Grudoss and remonstrated. He ordered his durwans to beat him and this prisoner Kassinath was very severely beaten then they thrust upon him a brass dish and *lota* and accused him of theft. This the prisoner denied and stated to the Police, that he was not a thief but a murderer. On which he was forwarded to Hooghly and made the original confession (before the Chief Magistrate)."

## NOTE.

This prisoner's confession marked letter B taken down in English is attached to the record. It bears date 24th April, 1857. It is here copied as is also the confession of Juggurnath taken at the same time. A. These confessions are taken more concisely.

A. "The examination of Juggurnath Singh, son of Rambux a resident of Manickpore in Lucknow taken by me, S. Wauchope, Esq., Justice of the Peace, on the 23rd April, 1857, in Calcutta, who, being charged with the murder of Madhub Dutt, saith: I assisted in the murder of Madhub Dutt which took place in the month of Pous last, I think on a Saturday, and it happened in this wise. In the preceding Kartick, Mungul Singh who is now dead, but who was at that time the durwan of Grudoss Dutt and whose duty was to collect the rents from his bazar, told me that if I would hire myself to murder Madhub Baboo the father of Grudoss, I should receive Rs. 5000. At that time I was out of employ and he was of the same set. I told him I would think over it, Kasseenath then told me that he would make enquiries and if it could be done with safety he would let me know. Kasseenath was one of my companions. He was with me last night and when I was arrested, he made his escape Sobhan Singh was the third of my companions. He is now at home in the village of Oolara Chundokee, in the *ilaka* of Jamoo Nesees, in the zillah of Lucknow. Afterwards Gunness Singh who is Grudoss' Jemadar and Mungul Singh and Kalee Singh who was Chuttoo Baboo's durwan but has now gone home, sent us

three companions to a Bunnya's shop at Chundernagore. The name of the Bunnya is Modoo and he lives in the corner of the Lall Dige there, and we stayed there for about two months nearly until we got courage and matters were arranged, I had a pistol which Gunese gave me from the Baboo and which I produce, and fifteen bullets fifteen caps and powder flask which I produce. For a fortnight before the murder, Mungul and Gunnese used to come continually and asked us if we were ready to murder the Baboo and we said we were afraid. Then they told us we were all women and had not the courage of men. Mungul came to us on a Saturday in Pous and said the Baboo is coming by Rail from Calcutta to-day I shall show you myself how to do the work. He said come to the Railway Station at Hooghly and you will see if I can do it or not. Therefore in the evening we, that is, I, Kasee Singh and Sobdan Singh went from Chundernagore to the Railway Station and we found there Gunnese, Mungul and Gujadhur. Kasee Singh had a carbine and a *tulwar*, I had this pistol and a *lattee* and Gujadhur had a knife and sword. The road from the Railroad Station comes to another *pucka* road and on the other side is a garden with a *pucka* wall round it and at the corner is a toddy-shop and about a hundred paces south of this toddy-shop we took our stand, Mungul Singh took the carbine from Kasee, I had given the pistol to Gunnese. Presently the Baboo came along in a little *palkee garree* with a small grey horse very lean. In the dickey was the coachman and khansamah went before with a lamp, two shots were fired. In the carbine were eighteen bullets (slugs I suppose S. W.) It was dark and I therefore did not then know the result of the shots, I saw the grey horse by the light of the lamp, I believe Kasee struck the coachman with a sword, I struck a man whom I supposed to be the Khansamah with a *lattee*, we three went then from fear to Tarukessur and the others then went to Calcutta *via* Seoraphola, and Purbhoo Pattuck came to us with money for our expences. He is now at home, the other then went by *garie* to Calcutta, but did not cross the river at Fulta. I received and so did my two friends each one thousand Rupees worth of gold in *ingots* the which having received I went to my home and sold it for Rupees 750 at Pyrag, a man Opadhya who was in the service of Grudoss Baboo went to Pritaubghur to Madarbux Kanoongoe; that Kasee was the murderer, he was arrested, and I came back here, when I went that evening with the others, I went with the intention of killing Madhub Dutt, I never saw Grudoss Baboo, but the other day when I demanded money from him. This is all said of my own free will."

Taken by me,

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another.

(Signed) S. WAUCHOPE. (Signed) जगन्नाथ सिंग  
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"The examination of Kassee Singh son of Grudoss Singh a resident of Bunodha zillah Lucknow taken by me, S. Wauchope, Esq., one of her Majesty's Justices of the Peace, on the 24th day of April, 1857, and being duly warned, saith :

"I with others murdered Madhub Dutt in the month of Pous last year on a Saturday and am willing, having been arrested in that charge, to state the whole circumstances. They thus occurred. The first talk of murdering the Baboo was in the month of Kartick previous when Mungul Singh who was a Durwan of Grudoss Dutt in the office department but is now dead having poisoned himself in the month of Kartick last, and Gunnese Singh who was Jemadar at the Baboo's door, but has now gone home which I don't know, but I believe to be at Ametee, in zillah Sultanpore, came to me and said, if you murder Madhub Dutt the father of Grudoss Dutt, the latter will give you for the job a lac of Rupees. This was said after he had engaged me and Juggurnath and Sobdan, who is at home in Ametee zillah Sultanpore, and had sent us up to Chundernagore as *ticca* servants, we there lived at a Moodee's shop near the Loll Diggy, who, I think, was called Modhoo or Juddoo Pall. There we stayed more than two months, Gunnese Singh bringing us money unknown to him, we at first refused to murder the Baboo, but when he said, then give me back the Rupees you have eat and promised largely, we consented ; at last on the Saturday in Pous we received information from Gunnese that Madhub Dutt who lives at Chinsurah was to come up from Calcutta by Rail that evening, and that the business was to take place that evening, we then i. e. I, Juggurnath and Sobdan accordingly went to a place at the corner of a Baboo's garden surrounded by a brick wall near a toddy-shop, and on a pukka road which runs at right angles with the road which comes from the Railway Station. I had a carbine which I had when going to a *dunga* at Mysadul had purchased in Calcutta as also a *tulwar*. The carbine was loaded with a number of bullets, Juggurnath had a pistol, we found there Gunnese, Mungul and Gujjadhur who is at home in the Sultanpore district, we saw the Baboo coming along in a carriage, *ticca* I should say, with a lean horse and *tatoo* and I think some one held a lantern for it went out when we fired. I was to have fired the carbine, but I said I cannot do it, and Mungul took it and fired at the carriage and Gunnese fired the pistol having taken it from Juggurnath who struck at some one inside the carriage. It was dark, and I could not see the result of the shots, but I have no doubt they hit. Afterwards we then made our escape and went to Tarukessur and stayed there four days and Nunna Buniah who is a servant of Grudoss gave us in gold what he said was a thousand Rupees each. Then after a short time I sold the gold

in various places and I went home, but all my people cut me and I spent all my money and came back here a few days ago. I went with the others for the purpose of murdering Baboo Madhub Dutt at the instigation of Gunnese and Mungul, the servants of Grudoss Dutt, and I understood that it was by their master's order that the murder was committed. I myself have never seen Grudoss Dutt who I was told had had a quarrel with his father the murdered man, for many years on account of the concubine of the latter and her sons and their succession. All the above I have said of my own free will and no one has prompted me in any way whatever."

*Calcutta.*

(Signed) S. WAUCHOPE,  
C. P.

काशी सिंह

(Signed) KASSEE SINGH.

Juggurnath, the second prisoner endorses the statements of the first prisoner, and it will be needless to go over the whole detail. He states, that Gunnese gave him the pistol\* to shoot

the Baboo with as it was an English one and would be sure to go off and gave him the powder flask, sixteen bullets and copper caps. Then the same facts are detailed. The cause of the murder is stated to be, that Madhub Baboo the father of Grudoss had a family by his wife's sister who lived with him in concubinage at Chinsurah. That he wished Grudoss to settle a lac of Rupees on his sons by that woman and gave him ten days to execute the deed, failing to do which, his father Madhub threatened to leave to them his whole fortune. Then follow the details antecedent to the murder, and subsequent to it. That the carriage was attacked on the west side by Mungul Singh, and on the east side by Gunnese, the former discharging into it his carabine, the latter the pistol. That after the murder, Mungul, Gunnese and Gujjadhur returned in the carriage to Calcutta, then the narrative goes on to the facts already recorded in the confession of Kasseenath. That they received 3000 Rupees or 1000 Rupees each in three paper parcels. This prisoner had thirteen gold mohurs at 20 Rupees each, thirty-nine sovereigns at ten each, a piece of gold and 45 Rupees cash. Kasseenath's share was paid over to his uncle Gujjadhur for him by Purbhoo Pattuck. The prisoner goes on to state how they went to the various shrines, Juggurnath, Muthoorra and Brindabun, on arrival at his home, the prisoner's father said, you have committed murder in Bengal, depart and live where you choose. Heard that the prisoner Kasseenath had been arrested at Pertabghur, but was released after twenty days; proposed to him to go down to Calcutta and clear themselves. The manner of the arrest corresponds with that already recorded.

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The vernacular confessions formally reduced to writing, correspond in all material points.

From these confessions we arrive at a correct idea of the manner in which this murder was committed; the object for which this act was perpetrated and the characters of the prisoners.

The statement of Beeprochurn Dutt taken on the 29th of December immediately after the murder, was, that he had been a servant of Madhub Baboo for about two months. He and his master went to Calcutta and returned by the Train at 7½ P. M. were returning in the hired conveyance of Byroo Dutt, Kaloo Syce and Sreenath Mullick his second son-in-law, were inside the carriage and his servant Dyal Napeet, when at the *bageecha* of Jeebun Pall they were attacked and shot. He fell off the coach-box. His master was shot dead. Kaloo Syce, Dyal and Sreenath ran away.

In extreme agony this poor lad only survived to record an epitome statement to the above effect on the following day and died an hour afterwards.

Sreenath Mullick witness, deposes to the above facts, the attack upon the carriage, two shots being fired; to the box in the carriage with money in it being untouched; was himself wounded on the left leg and was three months in hospital under Dr. Baillie's care. Deposes to the connection between his father-in-law and his wife's sister and having issue by her four sons and two daughters. Grudoss and a sister are the issue by Madhub's wife.

Bhoyrub chowkeedar, witness speaks to arresting the prisoners Nos. 1 and 2, on Seetul Singh's pointing them out as murderers. Kassee Singh managed to escape from him, carried off Juggernath to the thannah. The arms and pistol were found in the possession of Juggernath's uncle on the information of Seetul Singh who lives in the same house.

Durmodoss Gangooly swears to reducing the confessions to writing; knows the prisoners in consequence and identifies them.

Bridjkissore Dutt, is a son-in-law of Madhub Baboo, deposes that deceased proposed to visit his grants on the Matlah, for which purpose he was to go next day to Calcutta, proposing to return in five or six days. Deponent went in the evening to visit Cassessur Mitter, the Principal Sudder Ameen of Hooghly, and returning home that evening met the carriage with the dead body in it; there were five or seven bullet marks in it, and as many marks of sword-cuts about it. That five or six days previously he had been told by the murdered man, that he was tracked.

Jadub Pall speaks to the two prisoners and another (*booree jowan*) person of vast physical development, put up with him

as lodgers during the cold season, on Saturday morning they said they were going to Burdwan to fetch money. Heard on the following morning of the murder. They had two pistols little and big, and two swords, cannot swear to this pistol and these swords. Identifies the prisoners.

Surmoo jemadar of the Chandernagore police identifies these prisoners as having lodged with the above deponent.

Dr. Baillie examined as to the *post mortem* examination, knew the body to be that of Madhub Baboo, having attended him occasionally as physician, states that he was killed by a bullet wound, penetrating the liver and coming through the back. That the death of Beeprochurn was also caused by a bullet or bullets in consequence of which he died in extreme agony.

The Chief Magistrate was examined as to the confessions on arrest and the formal confession. He states that no communication took place between the two prisoners before Kasee's confession had been recorded, they being secured in different places of confinement. The Chief Magistrate also notes that these confessions are confirmed by the confessions\* of Sobdan, Purboo Puttuck, Gujjadhur and Kalee Singh taken at Lucknow, the two former confirming the statement as to the residence at Chandernagore. The above were arrested by means of the Telegraph through Sir Henry Lawrence, by Mr. Block, Deputy Commissioner at Sultanpore. These men were released at Allahabad on the out-break of the mutiny.

The Chief Magistrate also states that when Jadub Pall was traced by the description of these prisoners, he drove him down at night to where they were confined and they mutually recognized each other and the Modée enquired after the third.

This case comes up for trial on the express authority of Government. The Additional Sessions Judge having fallen ill, the trial of this case has devolved upon me.

It belongs rather to the Chief Magistrate, than to myself, to enter into explanation as to how far the prisoners were induced to return from Lucknow to Calcutta and upon that clue that officer acted, and of which there is no memorandum upon the record.

The manner in which they were arrested is clear and Seetul Singh was evidently in communication with the police.

They were arrested, which is sufficient, upon information received.

Owing to the mutiny four others of the gang have escaped which is much to be regretted.

We trace the whole thing, from these confessions, to Baboo Grudoss of Colootollah. The confessions state that

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this gang of assassins was hired by him through his own servants to assassinate the old man his father and that for hire paid to them, subsequently, as from Baboo Grudoss, the old man was shot dead, as was also his servant the lad Beeprochurn mortally wounded. I cannot read these confessions without feeling satisfied of their truth in substance. I regret that the Baboo Grudoss was not put upon his trial, there appears, admitting these parties to evidence, to be sufficient proof for a case to go before a Jury. The Committing Officer was of a different opinion.

The Law Officer convicts the prisoners upon both counts of

## FUTWA.

*Question I.*—Are the prisoners, Kassee Singh No. 1, and Juggernath Singh No. 2, guilty of wilful murder of Madhub Dutt?

*Answer.*—I convict both the prisoners of wilful murder of Madhub Dutt on violent presumption.

*Question II.*—Are the prisoners guilty of having been accessory to the murder both before and after the fact?

*Answer.*—I convict both the prisoners, on violent presumption, of having been accessory both before and after the murder of Madhub Dutt.

The prisoners are therefore liable to *acoobut-i-shudeed*, which means severe punishment extending to death.

My only hesitation in so doing is this. That it weakens the chance of the punishment of the party or parties who instigated the act, and doubtless, the Sudder Nizamut Adawlut will give to this consideration, such attention as it merits.

P. S. The course I would propose to follow is this. To direct Mr Wauchope to take the evidence of these two men under Act XIX. 1837, under which, parties convicted, are available as witnesses at any stage of a trial.

Upon such evidence, I am of opinion that Baboo Grudoss should be at once arrested and whenever the case was ready and matured, that he should be committed to take his trial as a Parricide or be otherwise discharged in due course of Law.

Mungul Singh his Durwan is said to have poisoned himself. There are others of the gang who may be arrested again and who have already confessed. Their confessions are extant. The whole case presents itself in the form of very perfect circumstantiality.

From a recent trial, on which Gunnes Tewary, a Lucknow man, is now under capital sentence, for the assassination of Kasseenath, I am under an impression, that a system of assassination of Bengali Baboos, by hired Lucknow braves, prevails and must be sternly repressed. To hang the braves, employed

the indictment. His *futwa* is noted in the margin. They are pronounced liable to punishment by *acoobut* extending to death.

I concur in that conviction, I find them guilty upon both counts of the indictment.

I submit the record with a recommendation that both prisoners suffer the extreme penalty of the Law.

as stated by them, by Grudoss Baboo, through his servants, to assassinate Baboo Madhub Dutt, and not even to subject the son, to the ordeal of a trial, for the murder of his father, appears to be, in its natural consequence, to encourage this system of assassination, and I would submit these remarks, for such consideration as the Court may deem them worthy of, for I do not perceive, that Mr. Wauchope's subsequent plans, can in any way, be prejudiced, by following the course, indicated in these remarks.

*Remarks by the Nizamut Adawlut.*—(Present: Messrs. D. I. Money and G. Loch.)

*Mr. D. I. Money.*—This is a most extraordinary as well as painful case, whether we look at the atrocious nature of the crime, the public highway where, and the early hour when, it was committed, the calculating villainy of the hired instruments who committed it, the brutal trading in blood, or the unnatural source, to which the confessions of these men, if they are to be believed, ascribe its origin.

The facts of the case, as gathered principally from these confessions, are narrated by the Sessions Judge.

There are dark features in it, which distinguish it from the common category of murders in Bengal.

The assassins are hired by agents, and act through agents, in order to screen the principal. They take a part in the execution of the deep laid plot, and share in the profits. They go together to Kalee Ghat, and oaths are taken before the idol shrine, that the deed shall be done and the bribe shall be paid. Both before and after the murder the idol appears to have been propitiated.

The two prisoners Juggurnath and Kasse together with Soldan, not apprehended, take up their abode for two months at Chandernagore in the house of a Moodee, named Jadub Pall, near the Loll Diggy, while the diabolical scheme is being concocted, waiting for orders and the opportunity. Mungul Singh, who is said to have been a purveyor to Grudoss in Calcutta, supplied them during this period with money for their expenses, Purbhoo Pattuck cooked for them, and was to be paid by Grudoss. The plot at last ripened. The chief agent Gunnese, the Jemadar of Grudoss, had made his preparations. The instruments were ready. They were warned that Madhub Dutt had gone for a day or two to Calcutta, and would return on the Saturday by the Train. He arrived at the Hooghly station at  $\frac{1}{2}$  past 7 P. M. Sreenath Mullick his son-in-law, and Dyal Khan-samah came with him in the Train. A broken down Palkee Gharree with a slow horse is hired to convey him to his house. Sreenath and the Khansamah get inside with him. Gunnese and Gujjadhur and Mungul have joined the rest of the gang and lie in wait. As soon as the carriage appears, it is attacked by the

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gang, Mungul with the carabine, which he had taken from Kassee, and Gunnese with the pistol firing into it. Madhub Dutt is shot dead, and the lad Beeprochurn Dutt, who is driving, is wounded and dies the following day.

All this, with the flight of the assassins, the distribution of the promised bribes, and the subsequent arrest of the two prisoners Juggurnath and Kassee, is given in detail in the confessions with a truth-like circumstantiality.

These confessions, although they may implicate others, and be borne out as to the main facts by the confessions of the rest of the gang taken elsewhere, to which the Sessions Judge makes allusion, but which are not on the record, are of course only evidence against the two prisoners themselves. They were solemnly made and taken down in due form of law. They are proved to have been free and voluntary. No undue influence appears to have been exercised. There is nothing on the record to show that any inducement of any kind had been held out to the prisoners that could have had any influence upon their minds. There is no other evidence in the case incompatible with these confessions to throw suspicion upon them. There is nothing contradicted, nor any thing improbable in the appalling narrative. Although there may be one or two slight discrepancies, they are immaterial, when weighed with the whole body of facts they disclose. The evidence of Jadub Pall and the Chief Magistrate gives strength to their credibility. Taking them in their entirety, and judging of them by all the circumstances of the case, I see no reason to discredit them, and think them sufficient to convict the prisoners of the crime with which they are charged. I would sentence them, therefore, to suffer the extreme penalty of the law, as recommended by the Sessions Judge.

The Sessions Judge, in his concluding remarks, has offered some suggestions for the consideration of the Court.

Our duty, as Judges, is only with the prisoners before us. The Magistrate can of course adopt whatever ulterior measures he may think proper in this case. It is his bounden duty to resort to any legal measure in his power to bring such crimes to light, and the criminals to the bar of justice. The public safety, as well as the reputation of its authorised guardians, are equally concerned in the suppression of so foul a crime.

It is the more incumbent upon the executive authorities now, under the peculiar circumstances of the times, to take care that the crime of assassination, should there be any grounds for the apprehension entertained by the Sessions Judge, is not transplanted from the hot bed of vice in Lucknow, where it may be a plant of common growth, to find a congenial soil where it may take root and flourish in or near the presidency, and that hired

assassins may not with impunity be allowed to track for months the foot-steps of their victim in his daily path of life.

*Mr. G. Lock.*—The prisoners when apprehended confessed before the Superintendent of Police of Calcutta to having been present aiding and abetting in the murder of Baboo Madhub Dutt. Some days after on 1st May, 1857, they repeated their confessions before the same Officer when Officiating as a Magistrate of zillah Hooghly, and on 16th and 17th November last after pleading guilty to the charge, gave a detailed account of their part in the murder before the Sessions Judge, the purport of which is entered in his English report. The confessions of the prisoners shew that they were engaged to murder Baboo Madhub Dutt by Mungul Singh and Gunnese Singh servants of Baboo Grudoss Dutt son of the murdered man, that they were lodged in Jadub Pall Moodie's shop at Chandernagore for a month and a half waiting apparently for an opportunity to commit the deed and haggling with their employers for the price of blood. On the night, the murder was committed, the prisoner Kashinath loaded a carbine with nine bullets (slugs?) and accompanied by Sobdan Singh and the other prisoner Juggernath Singh who admits he had a pistol loaded with ball, took up their position in front of Jewan Pall's garden where they were joined by Mungul who asked them if they were ready, and on their refusing to act, because they had received no money nor security for its payment, Mungul snatched the carbine from the hands of the prisoner Kashinath and fired it at or into the hired *palkee gharri* which was slowly making its way and in which was the Baboo, his son-in-law Srinath Mullick, and a servant, and on the box a boy named Beeprochurn Dutt, who was severely wounded and died shortly after from the effect of his wounds. Gunnese Singh, who had come up with the carriage, at the same time fired a pistol into it and then the murderers dispersed having wounded Srinath Mullick with their swords.

These confessions have been given voluntarily and are consistent throughout. The prisoners have been identified by the Moodie Jadub Pall as the parties who lodged in his shop for more than a month before the murder and disappeared on the day it occurred. I concur in the conviction of the prisoners and though they deny having fired the shots by which the deceased was murdered, yet they were present aiding and abetting and brought the weapons by which the murder was committed and were conspiring to commit it for a long time previous to its being done. I therefore sentence them to be hung.

With reference to the proposal made by the Sessions Judge in the last part of his report, I do not think the Court can interfere. If the Executive authorities think the evidence of these prisoners can be made available for the conviction of the instigator of this murder whoever he may be, they should apply to

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1857. the Government for the necessary reprieve, but it remains for  
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 Case of I see however no objection to the Sessions Judge when fixing  
 KASSEE the date for the execution of the sentence, allowing sufficient  
 SINGH and time to permit the Executive authorities to apply to Government for the remission of the sentence or postponement of its execution, should they think fit.  
 another.

## PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,  
*Officiating Judges.*

## GOVERNMENT AND MEERKANOD

*versus*

Midnapore. SREEMOTIA OOZEERUN (No. 1,) AND MUDHOO  
 SONAR (No. 2.)

1857. CRIME CHARGED.—Prisoners Nos. 1 and 2, count 1st,  
 December 21. theft of ornaments (valued at Co's. Rs. 5-8) attended with the  
 Case of murder of Hameedun Chokree. Prisoner No. 2, count 2nd,  
 SREEMOTIA receiving and knowingly keeping in his possession a portion of  
 OOZEERUN the above-mentioned ornaments, acquired by theft attended  
 and another. with murder; count 3rd, fraudulently and in violation of trust  
 appropriating to his own use property that was entrusted to  
 him.

One prisoner convicted of wilful murder on her own confessions corroborated by independent testimony: and sentenced capitally; another prisoner released on a charge of knowingly receiving stolen property. Remarks on the Session Judge's grounds of convicting prisoner No. 2.

Committing Officer.—Mr. C. F. Montresor, Officiating Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 25th November, 1857.

*Remarks by the Sessions Judge.*—The circumstances of the case are as follows: the prosecutor was absent at Lalgur and did not return home until 10 P. M. after 4th Kartik. About 10 A. M. of that day his nephew Monperooddeen, witness No. 16, while about his own business in another part of the town of Midnapore was told that the daughter of the prosecutor, Hameedun, a child of about five years of age was missing. On this he came home and learnt from the females of the family that about 8 o'clock that morning, the prisoner No. 1, Oozeerun had left the house to purchase rice and that the deceased, Hameedun, had intended going with her. Oozeerun and her mother appear to have been persons in indigent circumstances to whom the prosecutor had given shelter in his house and Oozeerun generally attended on, or was accompanied by, the missing child. Monperooddeen immediately proceeded in search of Hameedun and Oozeerun but for a long time to no purpose. At last he saw Oozeerun, and an old woman with rice on her

head coming along Mirza Mohullah at about 3 P. M. To his enquiries after the missing child, Oozeerun made no satisfactory replies, and would give no information, Moneerooddeen's suspicions were aroused against Oozeerun and he gave information at the police thannah that Hameedun could not be found.

As he was coming away he observed Oozeerun had been watching him; he replied to her, telling her what he had done; and a little after proceeded with the police jemadar and a burkundaz to the prosecutor's house. Oozeerun was arrested on his suspicion and search was made for the missing child in every direction, in wells, tanks, &c. without success until nightfall. The next morning Moneerooddeen aforesaid and a burkundaz Anundo Singh went with the prisoner to look after the child and returned after a useless search; in which she had evidently misled them.

The prosecutor and his nephew then accompanied Oozeerun, who, after wandering about for some time, said she should not be able to show the child alive, but her body.

The police were then fetched and all proceeded under the direction of Oozeerun to the jungle north of a conspicuous mound, where a dog has been buried to Gab Nullah not far from Gope house. Here the child's body was found, a coat belonging to her was lying not far off, and her *saree* was tied round her neck.

The prisoner then confessed her guilt both before the police and the Magistrate. In her first confession she stated, that she and Ramzan had accompanied the child to the place where the body was recovered, and that Ramzan strangled her with the *saree* she wore. In the confession before the Magistrate she distinctly admits having been a principal in the first degree in this murder by throttling the child, in which Ramzan assisted she produced a "*bagh nookh*" tiger's claws mounted in silver which used to be worn by Hameedun as a charm, and which the prisoner had buried in a gutter under the eaves of the house in which she lived, she admitted having pawned the child's *hasoolee* to a Soonar in Meer bazar and pointed out Mudhoo Soonar prisoner No. 2, as the man. This the prisoner No. 2, has admitted in his confession and the fact was witnessed by

Shamachurn Chuckerbutty, witness No. 18.

Wit. No. 18, pages 57 to 59.

In this Court the prisoner, who is a young woman of about nineteen or twenty years of age has no defence to urge. On the contrary she states that one Ramzan killed the child, when she ran away; that he had given her the *hasoolee* and "*bagh nookh*" to induce her to hold her tongue, and that she had pawned the former to the Soonar.

The above is all satisfactorily proved by the witnesses for the prosecution.

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and another.

The medical evidence distinctly shows that death resulted from pressure being applied on the trachea most probably by the fingers:

Mudhoo Soonar prisoner No. 2, admits having received in pawn the *hasoolee* from the other prisoner and that he melted it down which is a very suspicious fact, to explain it he states in his confession before the Magistrate that prisoner No. 1, sold it to him but is unable to say why she was content to take Rupees (2) two for an ornament which weighed *tollahs* 3-4-0.

Wit. to defence No. 221, pages 61 to 67.

Before this Court Mudhoo Soonar cites three witnesses. One of them Premdoss gave such evasive and irrelevant answers that the vakeel for prisoner would not examine him. The two other witnesses grossly contradict each other.

Do. do. Nos. 20, 21, pages 62 to 65.

Wit. to defence No. 20, pages 62 to 63.

*Koosoo Doss* states that Oozeerun the prisoner went to Mudhoo Soonar and asked him for the balance of the price of the *hasoolee* she had left with him for which he had given her (2) two Rupees; on which the Soonar paid her (7) seven annas.

Wit. to defence No. 21, pages 64 to 65.

*Muthoor Doss*.—States that Oozeerun gave three pieces of a *hasoolee* to the prisoner Mudhoo who, when he had tested it and weighed it gave her its value, Rupees (2-7) two and seven annas; and that the two Rupees were paid before him then and there.

The *futwa* convicts prisoner No. 1, Oozeerun of theft with murder and declares her liable to *seecasut*, it also convicts Mudhoo Soonar prisoner No. 2, of receiving stolen property knowing it to be stolen and declares him liable to *tazeer*. I concur in the conviction and consider Oozeerun guilty of the charge on which she is arraigned, "theft of ornaments attended with the murder of Hameedun;" the murder was deliberate and treacherous one, and I see no reason why the said Oozeerun should not be visited with the extreme penalty of the law; and I would recommend that Mudhoo Soonar be sentenced to fourteen years for "receiving property knowing it to be stolen."

*Remarks by the Nizamut Adawlut*.—(Present: Messrs. G. Loch and H. V. Bayley.) The confessions of the prisoner No. 1, Oozeerun, to the police and the Magistrate are very fully corroborated by independent testimony and circumstantial proof. The prisoner pointed out the body where it was found. She described the manner of the murder by strangulation, which is supported by the medical testimony. She stated where she had deposited the deceased child's ornaments, and

they were found and produced as stated by her. Although her confessions before the police and Magistrate vary as to the extent of her individual guilt and that of Ramzan respectively, her confession to the police making Ramzan the principal and herself not, and that to the Magistrate, making herself equally a principal, still we can see nothing to cause us to doubt that the prisoner Oozeerun was in truth a principal in this murder. Her statement to the Sessions Judge is to the effect that she received the ornaments from Ramzan when he had murdered the child. There is nothing to shew that the confessions to the Magistrate and police, were otherwise than freely and voluntarily made.

As to the prisoner No 2, Mudhoo Sonar, the Sessions Judge convicts him of "receiving property knowing it to be stolen." The Sessions Judge does not state whether "knowing it to be stolen" by murder or not; and the sentence of the Zillah Judge is fourteen years' imprisonment. We cannot concur in this conviction. There is nothing directly in the way of evidence against this prisoner, but the statements of prisoner No. 1, to the Magistrate, that when she gave prisoner No. 2, the ornament (a *hasoolee*) she said that it had been obtained by murder. There remains the presumption to be derived from this prisoner having melted up the ornament, and from the price given. In regard to the former point, we do not think that it is any proof of itself of a knowledge that the property had been acquired by murder, and it stands alone as ground of suspicion against the prisoner that he knew it had been improperly obtained. In regard to the price, we observe that 3 Rs. 4 annas, was the weight of the *hasoolee*, and 2 Rs. the sum advanced on it. The article was broken and old. The transaction between the prisoners was carried out in the presence of witness No. 18, and the evidence of that witness does not prove any knowledge on the part of prisoner No. 2 that the property had been acquired by murder or theft. The witnesses for the defence of the prisoner No. 2, may be untrustworthy, but in criminal cases it is the sufficiency of the evidence for the prosecution, not the weakness of that for the defence, which must support a conviction.

We sentence the prisoner No. 1, Oozeerun, to death, and acquitting the prisoner No. 2, Mudhoo Doss, direct his immediate release.

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Case of  
SREEMOTIA  
OOZEERUN  
and another.

PRESENT :

D. I. MONEY, Esq., *Officiating Judge.*

## GOVERNMENT

*versus*Hooghly. BOYKUNT MOOZOOMDAR (No. 1,) AND GOBERDHUN  
GHOSE (No. 8.)

1857.

December 28. **CRIME CHARGED.**—Nos. 1 and 8, 1st count, dacoity on the night of the 10th August, 1849, on the boat of Perbuttychurn Mitter on the Jelinghee near Kaleenuggur, thannah Hatrah, zillah Nuddea; No. 1, 2nd count, having systematically procured and counselled Noby Ghose and others to commit dacoity; No. 1, 3rd count, having systematically, unlawfully and knowingly received or bought property bought or stolen by dacoity; Nos. 1 and 8, 4th count, having belonged to a gang of dacoits.

The prisoner convicted upon the evidence of approvers, the circumstantial evidence, and the violent presumptions arising out of it, of having belonged to a gang of dacoits, and sentenced to transportation for life. Remarks upon the evidence necessary for a conviction on such a charge.

Committed Officer.—Mr. J. R. Ward, Commissioner for the suppression of dacoity. Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Hooghly, on the 10th October, 1857.

*Remarks by the Officiating Additional Sessions Judge.*—First count, two approvers,\* whose confessions will be found at pages 18 and 62 of the printed selections from the confessions of dacoit approvers (Nuddeah Gwal-

\* Wit. No. 1, Noby Ghose.

" " 2, Manick Ghose.

la gangs,) relate the particulars of this dacoity and implicate to prisoners. They depose that the gang met at the house of prisoner No. 1; that he accompanied them to the boat, and was present when the dacoity was committed; and that the plundered property was taken to his house. The original proceedings show that the occurrence was reported and that information† was lodged against Berjoo Ghose, one of the gang

named by the approvers, who was apprehended, and who confessed before the Darogah. To prove further the confederacy of prisoner No. 1, with the other dacoits, it would appear that while the investigation was going on a petition‡ was presented to the Darogah by one Gungaram Bhattacharj, wherein it is aver-

ed that the prisoner was tampering with the witnesses; and in support of that allegation, it appears that Jadoo chowkeedar, who had deposed§ to the occurrence of the dacoity, afterwards declared|| that he had given no such information. Gungaram Bhattacharj now proves that he presented the abovementioned petition. Witness No. 5, then a Da-

† Page 84.

§ Page 61.

|| Page 89.

rogah, who was specially deputed to investigate the case, proves that prisoner No. 1, became security for the appearance of Bhugwan Ghose and Goburdhun Ghose (named as engaged in this dacoity in the confessions of the two approvers) and of others suspected of the crime.

Second, third, and fourth counts. In addition to the dacoity referred to above, witness No. 1 deposes that he accompanied prisoner No. 1, in one dacoity, and prisoner No. 8, in two; and witness No. 2, deposes, that he accompanied prisoner No. 1, in one dacoity, and prisoner No. 8, in two. Those witnesses also depose that prisoner No. 1, habitually planned dacoities, received and purchased from them and others property acquired by dacoity and harboured dacoits. The printed selections referred to above abound with allusions supporting these allegations. Witness No. 1, in confessing to another dacoity says, "I gave 15 Rupees to Juggut Bukshee in the house of Boykunt Moozoomdar to make a report in my favor."\* And again "I gave

\* Page 4.

a pair of *tushur dhotee* to Boykunt Moozoomdar, which he has still with him. Boykunt Moozoomdar wanted something from me, but on my refusal, he had my house searched by the jemadar of the Lukeepore pharee; so I gave 10 Rupees to Boykunt and 5 Rupees to the jemadar."† And so on at pages 11, 12, 13, and 19 (confession No. 17.)

† Page 7.

21, 22. Also at pages 63, 69, 71, 75, 76, 77, 78, 79 and 81, of the confession of witness No. 2.

Approver witness No. 3, relates the particulars of a dacoity which was committed about twelve years ago in the house of Degamber Biswas Kyburto of Porogachea, and avers that it was planned by prisoner No. 1, who supplied the weapons, and who afterwards received the property. It should be mentioned however that this witness has prevaricated in regard to the fact of his having held personal communication with the prisoner. *Nuthee* No. 81, affords strong corroboration of the evidence for the prosecution in regard to the general charges. The notice of the Magistrate of Nuddeah having been attracted to the prevalence of dacoity in the Jellinghee river, he proceeded

‡ *Roobukaree* page 1.

to hold a local investigation; and after examining sixty persons who resided near the scene of the depredations, he was satisfied that the two witnesses, prisoner No. 8, and others were the culprits, and that they were instigated and protected by prisoner No. 1. The Magistrate called upon them to furnish security for their good behaviour, but his order was reversed in appeal. §

§ Page 255.

Eleven of the witnesses examined on that occasion are entered in the calendar; but witness No. 8 deposes that he is not personally acquainted with those whose names he mentioned in his

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evidence before the Magistrate of Nuddea as having been harboured by prisoner No. 1, and that he did not become acquainted with that prisoner until he entered the service of Mr. Smith, an indigo-planter, which appears to have been after the witness was examined by the Magistrate. Witnesses Nos. 10 to 18, having made similar statements, I did not consider it necessary to record their depositions. I deem it my duty however to mention that after I had proceeded to the trial of another case, several of those witnesses returned to my kutcherri and represented that they had been subjected to maltreatment on account of the evidence they had given before the Magistrate.

A former Dacoity Commissioner, in committing a case in which witnesses Nos. 1 and 2, were examined, certifies that "while each approver was recording his statement, he was kept in a separate guard-house under separate guard, and every precaution was taken to prevent the possibility of any collusion or communication, and I am convinced that no such took place;" it appears also that the records were not received by the Dacoity Commissioner until after the confessions of the witnesses had been taken.

*Defence of the prisoner.*—Mr. Doyne, a barrister of the Supreme Court, defended prisoner No. 1. That prisoner stated before the Committing Officer that he caused the apprehension of witnesses Nos. 1 and 2, who were his ryots, when they were summoned by the Magistrate of Nuddeah; that he turned witness No. 1, out of his house, and that he is unacquainted with witness No. 3. At the Sessions he states that he turned witnesses Nos. 1 and 2 out of their houses; that the former gave him some cattle in payment of a debt, but afterwards carried them off forcibly and assaulted the man who was taking care of them, and that he (prisoner) gave evidence in a case regarding the assault; and that he caused witness No. 2, to be apprehended. I have

\* Deenonath  
versus

Nobai Ghose, petition presented on the 24th March, 1853.

examined, and that it was dismissed. There is no proof of the

† *Nuthee* No. 4.

it is alleged that the prisoner was instrumental in the apprehension of witness No. 2, will show that the prisoner did not

‡ Page 1, information of Ishur Rae.

assist the police, and that the witness was apprehended‡ by Ishur Rae, burkundaz. The learned Counsel did not call the witnesses to character cited by the prisoner.

referred to the proceedings\* in the case of assault, and find that prisoner's servant did prefer a complaint against the witness in which the prisoner was examined. A reference to the case† indicated, in which the prisoner did not assist the police, and that the witness was apprehended‡ by Ishur Rae, burkundaz. The learned Counsel did not call the witnesses to character cited by the prisoner.

Prisoner No. 8 states that he had a caste-dispute with witness No. 1, and a dispute concerning a woman with witness No. 2. Before the Committing Officer he simply denied his guilt.

Mr. Doyne, delivered an able address on behalf of his client. His main argument was that the evidence of the approvers is wholly unsupported by any independent evidence.

I see no reason to mistrust the evidence of the approvers. There doubtless was some quarrel between prisoner No. 1, and witness No. 1; but no such cause of enmity has been disclosed as to lead to the conclusion that the witness has falsely accused the prisoner. The confessions and evidence of the approvers regarding the Kaleenuggur dacoity are accordant and probable; and there is not the least sign of collusion or fraud. The result of the personal enquiries of Mr. Montresor, the Magistrate of Nuddeah, a distinguished Bengalee scholar, seems to me to lead to the irresistible conclusion that prisoner No. 1 was the prime mover in the river dacoities, then so prevalent. In that enquiry there was no motive for a false accusation and there can be little doubt that the witnesses deposed unwillingly. The prisoner was a man of considerable influence; and evidence against such persons can rarely be obtained.

I convict the prisoners of having belonged to a gang of dacoits, and recommend that they be transported for life.

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REMARKS BY THE DACOITY COMMISSIONER.  
BOYKUNT MOOZOOMDAR.

The prisoner was denounced by the approver witness No. 1, in his original confession of January, 1854, and he was again implicated by the approver witness No. 2, who belonged to the same gang and confessed in May of the same year. Meanwhile witness No. 3, who belonged to another gang, had confessed in April and in the detail he gave of the exploits of his gang, prisoner's name again appears as an accessory in dacoity. Throughout the trials of several prisoners, arrested since witnesses Nos. 1 and 2 became approvers, the prisoner has been implicated and accordingly on the 2nd May last, the Magistrate of Nuddeah, was requested to apprehend him, which was done and he arrived here on the 28th May.

The confessions of witnesses Nos. 1 and 2, having been recorded before I assumed charge of this Office, I am unable to say of my own knowledge that collusion between them could not occur, but when committing Bhogoban Ghose for trial (Vide Reports Nizamut Adawlut; Vol. II. of 1855, page 111,) my predecessor wrote of them "while each approver was recording his statement, he was kept in a separate guard-house under separate guard, and every precaution was taken to prevent the possibility of any collusion or communication, and I am convinced that no such took place," nor could they have had access to the records before confession as these were traced on the confessions.

As regards witness No. 3, he mentioned prisoner quite incidentally as having instigated one Shagur Ghose to commit two dacoities to which he (witness) was invited, as more than ordinary forces were required for the occasions, but he never knew approvers Nos. 1 and 2 before he was arrested, he never committed dacoity with them and belonged to a gang

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*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Money.) The two approvers Nobai Ghose witness No. 1, and Ma-

quite distinct and in another part of the zillah, it is therefore impossible, he should have colluded with them to name this *one* man, and besides before arrest, Nobin Ghose had for some time taken refuge at Hidgellee, Nobay and Manick, being then prisoners in the Nuddeah jail. Had they been so inclined, even communication was simply impossible. Since his arrest, prisoner has been confined in my *hajut* guard. The records furnish ample corroboration of this witnesses evidence.

Prisoner is charged with one specific act of dacoity, with having systematically procured the commission of dacoity and received goods acquired by dacoity and with having belonged to a gang of dacoits.

COUNT I.—The witnesses Nos. 1 and 2, both were concerned in this dacoity, and both in their original confessions (No. 16, of Nobai's and No. 20, of Manick's) vide also printed confessions pages 18 and 62,) denounced the prisoner at the bar as having had a hand in it. Complaint was made at the thannah by the owner of the boat, but nothing was discovered till a fortnight after the occurrence when one Gungaram Bhuttacharj gave information (page 26 of record No. 256,) on which one Birzee Ghose, was arrested. In Birzee's house part of the stolen goods were found (page 30,) and he confessed (page 28,) but was eventually released, the owner of the goods having left and the evidence thus failing. The Magistrate's further proceedings evinced nothing.

To corroborate and confirm the approver's evidence there is the following. On the 28th August, 1849, Gungaram Bhuttacharj went to the Darogah with a petition, setting forth that prisoner was tampering with the witnesses with a view to preventing the case being properly enquired into, and he particularly referred to one witness in the case Jadoo Chowkeedar. The petition will be found at page 84, of the record and that it was founded on good grounds, would appear from the fact that the day after it was given in, Jadoo denied (page 89,) to Darogah, Jadub Chuckerbutty (who had been sent out) vice Ramdyal Ghose suspended (page 75,) having given any information to the Police regarding this dacoity. His deposition had however been recorded and is at page 61, I cannot produce Jadoo, for he has gone beyond sea in transportation for life, on a prosecution from this Office charged with this dacoity (Vide Nizamut Adawlut Reports of 30th September, 1856,) Gungaram however is the witness No. 4. He is a most unwilling witness but cannot deny his signature and on hearing the petition read out, admits having presented it and sworn to the truth of the facts represented. Then a reference to pages 41, 100 and 103, of the record shew that prisoner became the surety of all the parties arrested at the time. Such as Bhagoban Ghose and Goburdhun Ghose. He was also security for Birzee Ghose (page 6, of record No. 1127.) Jadub Chuckerbutty witness No. 5, swears the security bonds Nos. 100 and 103, were duly executed, but Ramdyal Ghose to whom the others were given is dead and can't be produced. Why should prisoner become the security of these dependents? Again when giving evidence in the case of Bhagoban Ghose on 12th June 1855, the witnesses

\* Vide also Nizamut Report, Vol. II. for 1855, pages 117 and 124.

Nos. 1 and 2, implicated prisoner\* as they had done in their confession and so did they also on the trials of Birzee Ghose and Jadoo Ghose on 29th May, 1856, and 19th September, 1856, respectively, all of whom were convicted. Copy of their depositions in those cases are annexed under Section 31, Act II. of 1855, and precedent of 2nd June, 1856, Nizamut Report Vol. I. of 1856, page 950. Counts 2nd, 3rd,

nick Ghose witness No. 2, relate very fully the particulars of the dacoity on the night of the 10th August, 1849, in the boat of Par-

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and 4th, may be taken together. To establish the charges we have first the evidence of three approver-witnesses, who implicated the prisoner as instigator or receiver in several dacoities as shewn in the accompanying form.

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Receivers and persons acting the part prisoner did, are seldom found implicated in the police investigations into cases of dacoity. I accordingly find prisoner's name in only one of the crimes mentioned in this statement, viz. in the highway robbery at the Gabarkoolenath. There at page 169, (of record No. 231,) Boykunt is spoken of as the protector of witness No. 2 and others, and eventually from a perusal of pages 180 and 198, it appears he became the security of that witness, who was strongly implicated by the evidence. It must however be borne in mind that witness No. 3, is quite an independent witness. He never knew either No. 1 or No. 2, and collusion with them was therefore impossible. His evidence is strong because it comes in an indirect manner. He had met Boykunt in Jail ;\* but otherwise was unacquainted with him.

\* I have tried to prove by the records that this assertion is correct, but witness and prisoners were in jail together about 1842, and the old records have all been destroyed.

It was through one Shagur Ghose that witness subsequently was asked to join in a dacoity which Shagur told him (witness) was to be committed at prisoner's instigation. Then there is the evidence of eleven witnesses residents of villages surrounding that where prisoner lived, who all declare prisoner is well known as a man of very bad character and protector of dacoits, who systematically received stolen goods. These witnesses were summoned because in 1851, they had given evidence on which prisoner was ordered to give security as a dangerous character.

The circumstances under which that enquiry originated are the following: The Magistrate of Nuddeah discovered that a gang of budmashes had collected along the banks of the Jellinghee and that owing to their depredations the traffic along the river had "almost stopped" (page 1 of record No. 81.) He proceeded to the spot and enquired. He found that a number of bad characters, amongst whom the two witnesses, Bhagoban Ghose, Birzee Ghose, Goburdhun Ghose and Jadoo Ghose had collected under the protection of prisoner and that they committed depredations right and left. He proceeded to Boykunt's house, but prisoner was not there, search was made through the premises, and, number of letters shewing what kind a character prisoner was and how disposed, were discovered (pages 88 to 94,) orders then issued for Boykunt's arrest. For a long time he evaded process but eventually surrendered (page 185,) and was called on for security, an order, which was reversed on appeal (page 255) however, throughout this record ample evidence appears to corroborate the testimony of the witnesses, that prisoner was intimately connected with dacoits. I would refer particularly to the Magistrate's final *roobakary* page 212, and to the defences of two prisoners, of whom Bhagoban Ghose was one, and both say the witnesses committed the dacoities and Boykunt Mozoondar protected them and received the plunder (pages 103 and 104.) Srocrun Ghose, another prisoner, pleaded that his only fault was his being prisoner's ryo (page 246).

The jemadar whom I sent out in search of the above witnesses also deposes that every where he heard Boykunt exceedingly ill spoken of. Nor is this the first time prisoner has been before the authorities.



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*In December, 1842, he was set at liberty after having been for some time in custody under a charge of murder (record destroyed).*

*In September, 1848, Podo Bewa's son refused to give evidence in a certain case on prisoner's behalf, prisoner therefore in revenge tried to dispossess her of her little property (page No. 1, record No. 247) her son was summoned to give evidence, but when the police went to serve the summons on him they heard he had been seized by Boykunt Mozoomdar. They therefore went on to Mohutpore, but there they met with resistance Boykunt Mozoomdar ordered the police jemadar and his people to be turned out of the village, which order Jadoo Ghose, Goburdhun Ghose, Nobai Ghose, (witness No. 1,) and others obeyed (page 1, of record No. 287.) The matter was reported and Boykunt with his friends were tried for the offence, but it was not proved; probably because it occurred in Boykunt's own village and witnesses against him were not to be found. To pay him off for his report Boykunt attempted to bring a false charge of dacoity against the jemadar, but it failed (page 1, record No. 306.)*

*In July, 1851.—Boykunt Mozoomdar with Goburdhun Ghose and others again appeared as defendants in a case of plunder, and had to give Rupees 200 recognizance to be of good conduct for one year (page 13 of record No. 572) but six months after he was before the Court once more charged with murder. The charge failed but nevertheless he was ordered to give recognizance again, and this time to the amount of Rs. 2000 (pages 88 of record No. 11.)*

*In February, of the same year he was committed to the Sessions on a charge of arson, assault, and wounding, (page 256 of record No. 70), he was acquitted.*

*Lastly in January 1854, he left his part of the country under suspicious circumstances and was reported being a dangerous character (page 1 of record No. 88.) It is very remarkable that this occurred just after Nobai Ghose confessed. It is not impossible prisoner may have heard that the approver had denounced him.*

*In defence prisoner pleads that he caused the apprehension of witnesses Nos. 1 and 2, who are taking revenge by denouncing him now. But Nobai and Manick Ghose came here from the Nuddeah *kajut*, where they had been for some months before their transfer. He pleads his good character, stating that he has for eight years been in Mr. Patrick Smith's service as gomashita and appeals to that gentleman to prove his assertion. I have not examined witnesses for the defence, but Mr. Smith writes to say Boykunt has, for nearly seven years been "his Nâib, and is of unexceptionable character. I can't think this avails prisoner any thing, because his character was only seven years ago proved to be so doubtful as to warrant a call for security to be of good conduct. He entered Mr. Smith's service not*

*six years ago, at least he was not in his employ on 17th July 1851, (page 1 of record No. 572.) Then he has twice been before the Courts since he became his gomashita, once for murder*

*and once for arson, when he was committed to the Sessions, which is not very respectable. But even if Mr. Smith does not know prisoner was connected with the dacoits, it is no refutation of the charge which refers to his conduct before he entered his service. Even before the year 1849, prisoner had been before the Courts.*

*I am quite satisfied of prisoner's guilt and commit him this 8th July, 1857.*

the prisoner No. 1. He was present when the dacoity was committed, and his house became the receptacle of the plundered property *after*, as it had been the rendezvous of the dacoits *before*, its commission. I do not lay much stress upon the petition presented by Gungaram Bhuttacharj, on which the Sessions Judge has remarked, or on the *subsequent* denial by Jadoo Chowkeedar of the statement he had *previously* made. They show undoubtedly that some undue influence had been exercised to prevent the procuring of evidence in the case, but by *whom* it is not legally proved. At the most it is only a suspicious circumstance against the prisoner. The evidence of the approver Nobin Ghose witness No. 3, contains, as pointed out by the Sessions Judge, prevarications regarding his having held personal communication with the prisoner No. 1. His testimony therefore, connecting as it does the prisoner with the dacoity in the house of Degumber Biswas, as instigator, supplier of weapons, and receiver of the plundered property, cannot be relied upon by the Court.

There is therefore only the direct evidence of the approver witnesses Nobai Ghose and Manick Ghose.

Mr. Montrieu, in his defence of the prisoner No. 1, has urged, that the dacoity in the boat of Parbuttychurn Mitter, if proved, would not be conclusive evidence of the prisoner having belonged to a gang of dacoits. It would only be proof of a *specific* dacoity, whereas *continuous specific acts of dacoity* must be established, and inasmuch as the *definite* charge of dacoity was not substantiated, the evidence of the 3rd approver witness being inadmissible from the doubt expressed by the Sessions Judge, it could not be taken as a *part* of the evidence to establish the fact that the prisoner belonged to a gang of dacoits.

The evidence of the two witnesses clearly inculcates the prisoner No. 1, as habitually planning dacoities, receiving and purchasing from themselves and others, property acquired by dacoity and harbouring dacoits.

In the case of Bhogoban Ghose tried by this Court on the 20th July, 1855, the evidence of these approvers was very carefully taken down and given at full length by Mr. Steer, the late additional Sessions Judge of Hooghly, and receiving corroboration from other evidence in the case was admitted by this Court, and upon that evidence so corroborated Bhogoban Ghose was convicted of having belonged to a gang of dacoits, and sentenced to transportation for life.

Upon the evidence of the same approvers Brijia Ghose was convicted of the dacoity on the boat of Parbuttychurn Mitter, and sentenced to fourteen years' imprisonment with labor and irons in banishment, and this sentence was confirmed in appeal by this Court on the 25th September, 1856.

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Upon the same evidence also Jadoo Ghose a Chowkeedar was implicated as being concerned in the abovementioned dacoity, and being convicted by this Court on the 30th September, 1856, of having belonged to a gang of dacoits, was sentenced to transportation for life with hard labor.

The evidence of the approvers in this case is given with the same clearness and distinctness, as in the other cases, in which it was relied on by this Court, and considered sufficient for the conviction of the prisoners who were sentenced in consequence.

In order to establish the charge against the prisoner of his having belonged to a gang of dacoits it is not necessary to prove, though in my opinion sufficient proof has been given, that he took part in the *perpetration* of this dacoity.

This is clearly laid down in the despatch of the Court of Directors dated 4th September, 1844.\*

\* See Circular Order No. 195, of 31st January, 1845.

Mr. Jackson, late Judge of this Court, has made the following very pertinent remarks on this subject in the case of Kalachand Ghose, decided by him on the 4th October, 1852.

See pages 516-17, of the printed Nizamut Reports of that year. "Now in this Law (Act XXIV. of 1843,) the enactment is clear. It refers (S. 1.) to any one who shall be proved "to have belonged to any gang of dacoits." It is not necessary to prove that he actually went on any particular dacoity, or took an active part in such a crime, all that is necessary to subject him to the penalty is proof that he has belonged to a gang, i. e. to a body of men banded together as dacoits."

And further on, where he explains that the law was general and free of all restriction and expressly included *professional dacoits* with dacoits of other description, he adds "these professional dacoits could not be reached on the ground of their specific acts of robbery, because they came from a distance, are not known, are systematically disguised, &c. &c., therefore the law says *any man belonging to a gang of dacoits* shall be liable to punishment; the reasoning is to me quite distinct and categorical; it might with more justice be said that the preamble describes the intention of the law to be to extend the Thuggee laws and persons concerned in the *perpetration* of dacoity and therefore the mere belonging to a gang without being engaged in the *perpetration*, will not render a party liable, but such an argument cannot for a moment be admitted, as the law distinctly includes persons who have merely belonged to a gang. The reasoning in both cases is the same; we cannot establish the perpetration against the individual, but we may establish the fact of belonging to a gang; the law therefore assumes that belonging to a gang shall subject a party to punishment, and very justly too, for if a man belongs to a gang of dacoits, it is

strong presumptive evidence that he has committed or intends to commit dacoities.

"The only points necessary to establish criminality are *first*, that it was a gang of dacoits, *secondly*, that the party belonged to it."

Concurring in the view taken by Mr. Jackson, and in the justice of these remarks, I would adopt the same course in this case, and consider whether the whole evidence taken together proves first that it was a *gang of dacoits* and secondly whether the prisoner *belonged to it*.

Besides the evidence of the approvers, there is the record No. 81, in which the Sessions Judge finds "strong corroboration" of the evidence for the prosecution in regard to the general charges. He refers to the local investigation held by the Magistrate of Nuddeah regarding the prevalence of dacoity in the Jellinghee river, the result of which satisfied that officer that the dacoits were instigated and protected by the prisoner No. 1, and he was called upon to furnish security for good behaviour. The Sessions Judge of Nuddeah reversed this order in appeal, not considering the proof sufficient.

The prisoner No. 1, has been ably defended by Mr. Montriou in this Court, as he was by Mr. Doyne in the Court of the Sessions Judge. It has been contended in his behalf by Mr. Montriou that the acquittal of the charge of *bad conduct* by the Sessions Judge of Nuddeah exculpates the prisoner upon this portion of the evidence produced against him, and that as the proceeding of the Magistrate was reversed by the Sessions Judge, it cannot be admitted now as judicial evidence against the prisoner of instigating dacoity and harbouring dacoits.

There is some weight in this argument, and I would admit it altogether in favor of the prisoner, if there were not other circumstances connected with the case, which tell against him.

The charge is supported by the fact, which is established by the record, and on which the Government pleader Baboo Sumboonath Pundit has made some forcible remarks, that the prisoners Brijonath, Nobye, Jadoo, and Bhugoban Ghose, who together with Goburdhun had been acquitted by the Sessions Judge of Nuddeah, were all afterwards convicted by this Court, and with the exception of the first sentenced to transportation for life as belonging to the Nuddeah gang of dacoits, and that the prisoner No. 1, had, at different times, whenever they were apprehended, stood security for them.

This is a very damning fact when weighed with the reliable evidence of the approvers.

Standing alone it is most suspicious, but considered with the evidence of the prisoner's participation in the dacoity in the boat, it leads, as the Sessions Judge has remarked, to the

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"irresistible conclusion that the prisoner No. 1, was the prime mover in the river-dacoities."

Each circumstance is a link in the chain of circumstantial proof. A single act of the prisoner taken in connection with other acts, and forming part of a general line of criminal conduct, if it relates in any way to or is associated with the crime with which he is charged, may be duly weighed, and forms necessarily a portion of the whole body of circumstantial or presumptive evidence, upon which, as corroborating or rebutting the more direct evidence, his guilt or his innocence will be established. It is only essential that the *whole* evidence taken together should be so strong, and clear, and consistent as to leave no reasonable doubt upon the mind.

This is the more important in cases like that before the Court, in which we have the testimony of approvers, as the direct evidence, a tainted testimony which the law for the public safety under certain conditions admits as legal evidence.

But what degree of credit should be given to such testimony is entirely within the province of the Judge, and great care is of course necessary in weighing such evidence. There must be corroborating proof not only of the *corpus delicti*, but the identity of the prisoner, and his participation in the crime and it is in the weighing of evidence of this nature, that presumptions arising from all the circumstances of the case, which cannot be controlled by any law or precedent, must be taken carefully into account.

In this case, I think, it is clearly established, upon the *whole* evidence, not only that the Nuddeah gang of dacoits existed, many of whom have met with their desert, but that the prisoner also belonged to them. The charge of belonging to a gang of dacoits is established also upon the same evidence against the prisoner No. 2.

I sentence them, therefore, under the provisions of Act XXIV. of 1843, as recommended by the Sessions Judge, to transportation for life with hard labor in irons.

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PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

*versus*

BECHOO BHOONYA.

Midnapore.

1857.

CRIME CHARGED.—Dacoity in the house of Pershad Bhoonya, of Dhulghuree, thannah Dagmarce.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Captain C. H. Keighly, Assistant Dacoity Commissioner at Midnapore.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Midnapore, on the 25th August, 1857.

*Remarks by the Officiating Additional Sessions Judge.*—The

Witness No. 1, Must. Peary.

approver\* deposes to the facts of this dacoity and affirms that the prisoner was engaged in it. The truth of her statement is corroborated by the former proceedings. The owner of the house gave information on the day after the occurrence that he had recognized the approver. She confessed in the Mofussil and before the Magistrate, and named the prisoner Mudhoo Mannah, Dheeroo Bareek, Goluck Bhoonya and Oodoy Pattar. She also confessed and named the prisoner. The approver and the other confessing defendants were convicted at the Sessions on the 16th of February, 1852. The prisoner was released by the Magistrate.

The evidence of the approver corresponds with the facts previously elicited. There are some variations in her statements before the Committing Officer and at the Sessions; but such variations do not affect the credibility of her testimony.

In a confession taken before Captain Keighly, on the 24th of January last, Rughoobhoo (whose sentence has since been carried out) criminated the prisoner in this dacoity.

The prisoner simply denies his guilt, but imputes no motive for a false accusation. Three witnesses examined on his behalf give him a good character.

The charge has been satisfactorily established against the prisoner. The confession of the female approver was taken in April, 1855, the prisoner was not apprehended until June, 1857. The record was not received by Captain Keighly until after her confession. And at the time she confessed, there was no other prisoner from thannah Dungmaree in Captain Keighly's lines.

The prisoner is deserving of severe and exemplary punishment. He is the nephew of the owner of the house, though

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Case of  
BECHOO  
BHOONYA.

The prisoner acquitted. Previous confessions of prisoner, although implicating him, being held to be entirely insufficient for his conviction where the evidence of the approver was not clear and consistent.

1857. there appears to have been no enmity between them. The owner of the house was wounded on the head with a sword, and his wife was burnt with a lighted torch in order to make her disclose where the property was kept, I accordingly sentence the prisoner to be imprisoned for fourteen (14) years with labor in irons in banishment.

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Case of  
BECHOO  
BHOONYA.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Money.) The Sessions Judge alludes to *variations* in the statements of the approver-witness before the Committing Officer and at the Sessions. These are such as to affect, in my opinion, the credibility of her testimony. The rest of the evidence on the record consists only of former confessions of prisoners which, without clear and consistent evidence on the part of the approver, is entirely insufficient for the prisoner's conviction, I therefore acquit him and direct his immediate release.

PRESENT :

D. I. MONEY, Esq., *Officiating Judge.*

## GOVERNMENT

*versus*

Midnapore. RADHOO MOHAPATTAHUR (No. 1.) AND KINKUR JANA (No. 2, NON-APPELLANT.)

1857. CRIME CHARGED.—Dacoity on 18th October, 1843, in the house of Radhoo Singh, inhabitant of Amdooley Bushuntbahr, thannah Pertabpore.

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Case of  
RADHOO  
MOHAPAT-  
TAHUR and  
another.

CRIME ESTABLISHED.—Dacoity.  
Committing Officer.—Captain C. H. Keighly, Assistant Dacoity Commissioner at Midnapore.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Midnapore, on the 18th August, 1857.

The prisoners acquitted, on the ground, that the specific dacoity, with which they are charged upon the evidence of two approvers was not found by the court to be proved against them or other prisoners, when they

*Remarks by the Officiating Additional Sessions Judge.*—Two approvers\* depose that they, two prisoners, and a gang of about twenty or twenty-five men committed the dacoity; that they climbed over the outer door, and broke open an inner door of the house; and that they carried off property, which has been valued at Rs. 80-10-2. The owner of the house appears to have made a gallant resistance, and some of the dacoits were wounded by him.

In corroboration of the evidence of the approvers, I find from the original proceedings that they were both apprehended two days after the occurrence. The two prisoners were also apprehended and confessed in the Mofussil. They were acquitted of

this charge by the Magistrate, but called upon to furnish security for their good behaviour. Seven other persons were also apprehended, and they stated in their confessions that the two prisoners were present at the dacoity. The approvers affirm that Kashee Singh, their elder brother, was the leader on the occasion, and that statement is corroborated by the confessions alluded to above.

The prisoners pleaded in their defence that the charge against them is the result of enmity. They have not proved their allegation, and their witnesses say nothing in their favor. The charge is clearly established, and as the prisoners are men of notorious bad character, having been called upon to give security for their good behaviour, and having been both apprehended in another case of dacoity, I sentence them to be imprisoned for fourteen years with labor and irons in banishment.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Money.) When the two approver-witnesses, Keenoo Singh and Gour Singh, were tried by this Court on the 9th March, 1857, charged with dacoity in the house of Radhoo Singh, inhabitant of Amdooly Bushuntpoor, and with other dacoities, the Court (Present: Messrs. Loch and Bayley,) did not find the charge against them of dacoity in the house of Radhoo Singh proved, although the charges of perpetration of other dacoities were proved, which led to their conviction. The Court cannot therefore now, that these men have turned approvers, simply upon this ground, allow their testimony regarding *this* dacoity, which was not proved against *them* or other prisoners tried with them, although they were denounced by the approver witness in that case, to be evidence against the *prisoner*, when it is unsupported by any other direct evidence. The prisoner was formerly acquitted by the Magistrate of the charge of this dacoity, the only evidence against him being the confessions of other dacoits, which, however much they may implicate him, was only legal evidence against themselves. Those confessions are on the record, and might have strengthened the credibility of the evidence of the two approvers, had there been no doubt of their participation in this specific dacoity, but standing alone they are, as they were before, clearly insufficient for the conviction of the prisoner. I therefore acquit him, and direct his immediate release. As Kinkur Janah another prisoner who has not appealed has been convicted and sentenced upon the same evidence, the Court acquit him also and direct his immediate release.

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Case of  
RADHOO MO-  
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and another.

were put upon their trial on the same charge, and their testimony therefore should be confirmed by other direct evidence. The confessions of other prisoners, though legal evidence against themselves, being unsupported are clearly insufficient for their conviction.



PRESENT :

D. I. MONEY, Esq., *Officiating Judge*.

GOVERNMENT AND MONDA BEWAH

*versus*

Jessore.

ISHURCHUNDUR DUTT.

1857.

December 31.

Case of  
ISHURCHUN-  
DER DUTT.

**CRIME CHARGED.**—Being an accessary before the fact to the murder of Sumitra Bewah by procuring abortion on or about the 16th of March, 1857, corresponding with the 4th of Choitro, 1263, B. S., from the effects of which she died upon the 5th of June, 1857, corresponding with the 21st of Jeyt, 1264, B. S.

The sentence passed upon the prisoner by the Officiating Sessions Judge of five years' imprisonment with hard labor on conviction of being an accessary before the fact to murder by procuring abortion affirmed in appeal, the medical testimony supported by the circumstantial evidence precluding all doubt of his guilt.

**CRIME ESTABLISHED.**—The same as crime charged.  
**Committing Officer.**—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton Karr, Officiating Sessions Judge of Jessore, on the 20th November, 1857.

**Remarks by the Officiating Sessions Judge.**—The prisoner is related to the deceased Sumitra, who was the daughter of his father's sister. The prosecutrix who is the mother of the deceased, declares that her daughter had had an intimacy with the prisoner Ishur for two or three years, that in the month of Choitro last, she, the daughter, was absent from home for six or seven days, and that on her return, in a very weak state, she said that medicine had been given her to procure abortion, and her death happened in consequence. The intimacy with the prisoner was matter of notoriety in the village, and frequent visits passed between the parties. The intimacy is proved by the depositions of witnesses Nos. 1 to 5. These men declare further, that one day they saw Ishur and his uncle Gopal preparing some medicine, which the two men said was for Sumitra, who was ill of fever and dysentery and was lying near them; that she disappeared for some days from the village, and that on her return, in a very enfeebled state, she told them, (Nos. 2, 3, 4 and 5,) that something had been given to her, which had set her belly on fire. To some of these she mentioned the name of Ishur as the person who gave the medicine. The village to which she was taken is called Maldar, some four *coss* off, but on inquiry there, at the house of Kallachand Biswas, her maternal uncle, with whom she was believed to have remained (Sec, witness No. 4,) all knowledge of this was denied, as might well be expected, but that Ishur and Gopal Dutt went to the above person's house for some purpose unknown, is clear from the evidence of witness No. 18, who accompanied them. The general notoriety in the village of intimacy, of pregnancy, and of tem-

porary absence, is further proved by the evidence of witnesses Nos. 10 to 17, some of whom saw the deceased on her return in the helpless state already alluded to. There is thus no direct evidence of how, when and where abortion was effected, and so far no positive evidence that it was ever effected at all. But when the body was sent in for examination to the Sudder Station, it was found that a piece of wood of about four inches in length with a sharp point, and of the size of a quill, had been inserted through the fundament, piercing the neck of *vagina*, and causing the whole of the *rectum* to inflame and slough. The evidence of Dr. Elliot, the Civil Assistant Surgeon, is obviously here of the last importance.\* No suspicion appears to have been entertained, at least none was avowed in the mofussil, that abortion had been procured by any other means *than medicine*. The Civil Surgeon, it is true, cannot swear, that abortion was ever actually effected, but he cannot conceive that such a weapon could ever have been forced into such a position without such an intention, or with any other intention, except that of pure mischief, of which there is no suspicion, and to this weapon he distinctly attributes death, as caused by inflammation, sloughing of the *rectum* wholly, and of the *vagina* in part, general interruption of the digestive functions and weakness terminating in dissolution.

No notice was given to the thannah of the weak state of the deceased and of suspicions of foul play by the chowkeedar of the village, who failed egregiously in his duty, and who has been punished. Tandoram chowkeedar of the neighbouring village, witness No. 6, had seen medicine being administered to the woman and gave notice to the thannah accordingly. When the police arrived, Sumitra was still alive, and she resolutely denied intimacy, pregnancy or abortion, stating that she was ill with fever. This she did before the mohurir, who had a suspicion of abortion, though his report was one-sided, if not collusive. An incomplete investigation had been previously held by the Jemadar, and even the Dafogah who took the right view of the case, i. e. that there *had* been some foul play, did not seem to think the case proved. But these authorities had no knowledge of the piece of stick then lying imbedded in the body of the deceased, and it was not until the Deputy Magistrate took the case in hand himself that any evidence was forthcoming as to the previous condition of the woman.

The prisoner denies intimacy and the fact of pregnancy, asserts that Sumitra died of fever and attributes enmity to some of the witnesses as against himself. But so far from there being any trace of ill feeling, every thing that could be done, was done, to hush up the case. The account of death by fever is completely rebutted by the deposition of the Civil Surgeon,

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1857. and there can be little doubt as to the fact of intimacy, which was notorious throughout the village.

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DER DUTT.

The Jury found the charge proved against the prisoner. I concur with them. The deposition of the woman taken before the police must go for nothing, compared with the medical evidence. It is not necessary to prove whether abortion was committed *at the house of Kallachand Biswas* for the prisoner is not arraigned as principal on the murder. But what are the facts which are proved against him, and to what legitimate conclusion do they lead as regards the charge framed? He is known to be intimate with the deceased. He is seen giving her medicine, to allay fever, as he says; she then disappears from the village for some days, and on her return, is seen by credible witnesses unable to move, when *she declares* that medicine had been *given her by him, which had set her inside on fire*. The prisoner Ishur Dutt, never leaves her, but attends her to the last, at a time when, by the evidence of witness No. 20, Krishnao Singh burkundaz, her person had become so offensive as to be unapproachable, and she dies almost in his arms. Then to refute the story of fever a *post mortem* examination discloses the fact, that a piece of wood believed to be *lulchitra* or *cheeta*, such as is used for the procuring of abortion, is firmly imbedded in a part of the person, where it could only have been introduced for the purpose of causing abortion, after considerable force had been employed, and where it had, beyond question, produced inflammation and sloughing, terminating in death. *These are circumstances which cannot lie*. And the inference is irresistible that means were employed to attain a criminal end, of which the prisoner was fully aware, such an end was really attained; and that by such guilty knowledge he has become liable to a conviction as accessory before the fact. It is my opinion that there is sufficient in the evidence to make him an accessory *after* the fact; for his whole conduct and statements subsequently are presumptive evidence against him. But this not being part of the charge, I have only again to record my concurrence with the finding of the Jury, and to sentence him, under all the circumstances, to five years' imprisonment with hard labor.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Monney) I see no reason to interfere with the sentence passed by the Officiating Sessions Judge upon the prisoner in this case. He has given a full and clear explanation of the particulars of the case, and the evidence in support of the conviction. The medical testimony is of the utmost importance. Altogether the circumstantial evidence is such, taken with this testimony, as to preclude all doubt of the guilt of the prisoner. I therefore reject the appeal.

PRESENT :

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT AND ANOTHER

*versus*

RAMDOOLALL DEO (No. 1.) AND GUNESHSHAM  
SURMAH (No. 2.)

Tipperah.

CRIME CHARGED.—Prisoner No. 1, 1st count, committing a rape on the person of Mussamut Unnopoorna, wife of the prosecutor; 2nd count, attempt to commit a rape on the person of Mussamut Unnopoorna, wife of the prosecutor; 3rd count, attacking the prosecutor's house at night, forcibly dragging out Mussamut Unnopoorna, wife of the prosecutor with intent to rape her and assaulting Mussamut Kurrana. Prisoner No. 2, aiding and abetting in the above three crimes.

Committing Officer.—Mr. H. A. Cockerell, Officiating Magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah, on the 14th November, 1857.

*Remarks by the Sessions Judge.*—The prisoner Ramdoolall Deo (No. 1.) a man who describes himself as being fifty-five years of age, but who is far from appearing so old, has for some months past annoyed the prosecutor's wife by improper addresses, and when these were repulsed, by threats of dishonoring her, whenever an opportunity should offer. The prosecutor having been summoned to give evidence at the Sudder Station, was necessarily absent from home on the night of the 19th August, and his wife slept with her aunt Mussumut Kurrana (witness No. 5.) The prisoner, Ramdoolall Deo (No. 1.) doubtless aware of the husband's absence, and observing in it, the opportunity for which he had so long waited, came to the prosecutor's house late at night, accompanied by the prisoner Guneshsham Surmah (No. 2.) They entered and dragged the prosecutor's wife out of the house in spite of the interference of the aunt, whom the prisoner Ramdoolall Deo (No. 1.) struck with a *lathee*, and carrying her to an adjacent clump of bamboo trees, threw her on the ground. The prisoner Guneshsham Surmah (No. 2.) held her down, while the prisoner Ramdoolall Deo (No. 1.) according to the Magistrate's abstract of grounds of commitment "endeavored to accomplish his purpose, which was only prevented by the arrival of the neighbours" whom the cries of the aunt had summoned to the spot. Information of what had occurred was given by the talookdar at the nearest police station on the following day; and on the 23rd idem, the

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and another.

The Court con-  
cur with the  
Sessions Judge  
in his opinion  
of the credibi-  
lity of the ac-  
count given by  
the wife of the  
prosecutor of  
the outrage  
committed  
upon her, de-  
pending as it  
does upon the  
irreproachable  
character pre-  
viously borne  
by her and her  
manner and de-  
meanour while  
giving evidence  
before him,  
and in his re-  
marks general-  
ly upon the  
circumstances  
of the case  
and the whole  
weight of the  
evidence for  
the prosecu-  
tion, but en-  
tertaining a  
doubt, with re-  
ference to the  
*first statement*

1857. prosecutor who had in the interim returned to his house laid a formal complaint in the same quarter.

December 31. The Darogah was directed to enquire into the case, but the prisoners absolutely refused to give any answer to the charge preferred against them, which, however, the Darogah reported to be well-founded. They were accordingly sent in to the Magistrate.

made by the woman, whether the offence was actually committed, although months past, tried persuasion and threats alternately to induce her to yield to his wishes, but without success, as she invariably turned a deaf ear to both. At length availing himself of her husband's absence, and assisted by the prisoner Guneshsham Surmah, (No. 2,) he dragged her from her bed on the 19th of August, carried her to a clump of trees near the house, and while the prisoner Guneshsham Surmah (No. 2,) held her down and muffled her mouth, the prisoner Randoolall Deo (No. 1,) violated her person, the act, on his part, being completed before the neighbours arrived, and necessitated his leaving her and taking to flight.

Before the Magistrate, the prosecutor's wife stated that the act was commenced only and not completed when the neighbours came to her assistance, and disturbed the prisoners. The word used was "*arumbh*," and it is unfortunately inexplicit in a case of this description, as it may mean penetration (which suffices to constitute the crime of rape) or it may mean the attempt only to penetrate. When questioned on this point she adhered in the Sessions Court to her statement that the prisoner Randoolall Deo (No. 1,) only left her after full and complete fruition of her person.

The demeanor of a female giving evidence in a case of this nature is a matter of some importance in estimating the degree of confidence to which her statements are entitled. The prosecutor's wife detailed the wrong done her with the distress and reluctance of a modest woman compelled to enter into details, to which nothing short of necessity would have induced her to allude, and the impression excited by her appearance and manner was highly favorable to her being regarded as a respectable woman who has been subjected to gross insult. She is not only a wife, but the mother of two young children.

The attention of the witness (No. 2,) was excited by the cries of the aunt, and summoning the witness (No. 3,) who lives in an adjoining but, the two hastened together to the prosecutor's house, where they learnt from the old woman what had

Wit. No. 2, Anjoohaya Nath.

Wit. No. 3, Ramguty Nath.

taken place and what she feared was then happening. They went in search of the prosecutor's wife whom they found extended on the ground where she was held by the prisoner Guneshsham Surmah (No. 2,) the prisoner Ramdoolall Deo (No. 1,) lying on her person in the attitude of a man having connection with a female. On seeing the witnesses, the prisoners rose and fled. It would appear from the statements of these witnesses and of the prosecutor's wife, that the latter was in the undisturbed possession of the prisoners for quite, if not upwards, of a quarter of an hour, and if this be the case, the inference that the purpose which led to the outrage was completed, is greatly strengthened. The cause of this delay in rendering her assistance seems to have been partly a difficulty experienced on the witness Ramguttu Nath's part in leaving his house, before the door of which some person had placed a quantity of thorny boughs, a not common expedient to prevent interference from within when mischief is going on without. When this difficulty was overcome it was necessary to go first to the spot from whence the cries for assistance came, and when there, to ascertain what had happened. Finally, a search was to be made, for the aunt could only indicate the direction in which her niece had been taken, and as the night was dark the search must be, so far as it extended, careful. It may therefore be concluded that the witnesses have not exaggerated the time occupied in tracing the prosecutor's wife and the prisoners, to the clump of trees selected as the scene of her violation. If at the mercy of the prisoners for so long a time, it is inconceivable that no better; or to speak correctly, no worse use of their time was made than an attempt on the part of the prisoner Ramdoolall Deo (No. 1,) to do what the prosecutor's wife deposes was in fact, effectually and completely done, and to do which, had been the prisoner's object for months past.

In cases of rape where the sufferer is an adult woman, as in this instance a wife and a mother, and in effecting which, no laceration of parts or effusion of blood to indicate how far violence has gone can be expected, it is, I think absolutely necessary that reliance should, to a great extent, be placed on the statement of the woman herself, I, of course, suppose the value of her deposition to be unaffected by any thing indicating malice, or tutoring, and that the general impression entertained by the Court is, that she has spoken conscientiously and truthfully, were it not that penetration has been ruled to be sufficient to constitute the crime of rape, no one but the woman could possibly give the information requisite to establish its commission. But even this latter point is not easily or often proved by evidence apart from that of the woman, for the approach of witnesses is the signal for the violator to escape, and it can seldom be the case, that they arrive so unexpectedly as to admit of their de-

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1857. posing to more than the general situation of the parties. In  
 December 31. this case however, the statement of the prosecutor's wife is confirmed by the evidence of the witness Ajoodhaya Nath (No. 2,) to which for decency's sake, I must content myself by referring. Although his evidence was less explicit, or perhaps I should say, less descriptive in the Magistrate's Court, this witness, evidently intended to say that the prisoner Ramdoolall Deo (No. 1,) had effected his purpose and not that he was merely attempting to effect it.

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 DEO  
 and another.

\* Wit. No. 4, Ramdyal Doss.

This witness\* is the prosecutor's brother, but lives in a separate house. When awakened by the cries of the aunt and niece, he, too, found that his exit was rendered difficult by the ground before his door being strewn with boughs of a bush thickly covered with long and sharp thorns, called Panniala or *bukhoec*. He arrived at the clump of bamboo trees simultaneously with the witnesses Ajoodhaya Nath (No. 2,) and Ramguttu Nath (No. 3,) although by another road and found his sister-in-law in the situation already described. His narrative of what he saw, appears to me to support the statement of the prosecutor's wife, that the prisoner Ramdoolall Deo (No. 1,) actually violated her person instead of merely attempting the act.

† Wit. No. 5, Mussumut Kurroona.

This witness† is the prosecutor's aunt. She was sleeping with her niece when the prisoners entered the house, and received a severe blow on the right shoulder for interfering to protect her niece.

‡ Wit. No. 6, Muddunmohun Surmah.

This witness‡ is the prisoner Guneshsham Surmah's (No. 2,) first cousin. He deposed that he lives in the same homestead with the prisoner, who, on the night in question, came running hastily home, from the direction of the prosecutor's house with a *lathee* in his hand. He would give no explanation of his conduct, but hastily shut himself up in his house, as one seeking concealment.

§ Wit. No. 7, Kooloo Chunder Sein.

This witness§ is the prisoner Ramdoolall Deo's (No. 1's,) landlord, to malice, on whose part as I shall have occasion to show hereafter, the prisoner attributes the institution of this serious charge. He is an old and respectable looking man, and deposed that he had cautioned the prisoner Ramdoolall Deo (No. 1,) against persecuting the prosecutor's wife with his dishonorable addresses. Hearing a disturbance in the village on the night of the 19th August, he went to the spot, and was told of the violence which had taken place, of which he gave information on the following day at the hannah.

The prisoner Ramdoolall Deo (No. 1.) pleaded in his defence that on the night of the 19th August, he was seriously ill in bed. He attributed the charge to displeasure on part of his tolookdar, Kooloo Chundur Chowdry, at his refusal to give false evidence.

The prisoner Ghumeshsham Surmah (No. 2.) pleaded absence at a village some miles distant from that in which the prosecutor and his wife reside. On his return he heard that the prosecutor's wife had been dishonored in the course of the preceding night. He was included in the charge consequent on the event from enmity on the part of Kooloo Chunder Chowdry.

The prisoner Ramdoolall Deo (No. 1.) examined three witnesses, the first of whom is one of the Talookdars in litigation with his landlord. If they proved any thing at all to the purpose, it was, that the prisoner had a cold and fever on and about the 19th August. But I attach no value whatever to their evidence when weighing its slight and trivial character against the case for the prosecution, as developed in the preceding remarks.

The prisoner Guneshsham Surmah (No. 2.) is a *purohit* of *Dhobeas*. *Purohits* of this description are in Tipperah very rare, and they possess extraordinary influence with their *jijmans* inasmuch as while their services are indispensable on certain occasions, they are so few in number and so thinly scattered about the district, that those employing them have no alternative but to accede to their terms and are obliged to act, generally, in accordance with their wishes. The effect of conducting themselves otherwise would be the *purohit's* refusal to perform the ceremony required from him, and consequent loss of caste, perhaps, to the rebellious disciple. The prisoner Ghumeshsham Surmah (No. 2.) supported his *alibi* almost entirely by the evidence of *dhobeas*, whom I could not, for the reason I have given, regard as entitled to the confidence due to disinterested and independent witnesses. They gave the precise date required glibly and confidently enough, but could not recall to mind, when events of far more importance to themselves personally had happened. An *alibi* is so common a form of defence that the proof adduced to support it, must be weighed with care and received with caution. As a specimen of the evidence in the present case, I will take that of the fifteenth and twenty-third witnesses for the defence who deposed that the prisoner crossed their homesteads on the day in question. Now something may have occurred to impress a recollection of the 19th August, on the mind of the witness, but nothing could possibly have happened to enable him to recall to mind that the prisoner passed near his house on that day in common no doubt with many others; were the case for the prosecution which is commonly termed a "got-up" case, it is highly improbable that the

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1857. parties originating it would have selected as the date of the  
 December 31. occurrence, the very day on which one of the two persons they  
 were seeking to injure, would be able, as a little enquiry would  
 have shown them, to prove that he was elsewhere.  
 Case of For these reasons, mainly I consider the defence of neither  
 RAMDOOLALL prisoner to be satisfactorily established.  
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The Mahomedan Law Officer acquitted the prisoners on the entire indictment, as he doubted the possibility of their recognition by the witnesses and believed the charge against them to originate in hostility.

From this *futwa* I differ for the following reasons.

The plea that the charge emanates from malice and is wholly false, appears, so far as I can ascertain, to rest on very inadequate grounds. A charge of rape is in this country almost as serious a matter to the parties preferring it, as it is to the party charged, supposing the former to be, as the prosecutor and his family in this instance certainly are, respectable members of the class to which they belong. It involves, if not absolute loss of caste, a degree of disgrace which, however, unjustly attaches to the woman and her family so long as the memory of the occurrence lasts. The fact that the female was not a consenting party to the connection does not secure her, to the extent it should do, from being hereafter lightly and contemptuously regarded, and the prejudice, as is invariably the case, in this country, extends to her immediate relations. It is needless to enlarge on the reluctance with which a husband of decent character would appear as prosecutor, even in a well-founded charge of this description, or on the improbability that he would be induced to do so falsely and unnecessarily, without some very strong and powerful motive for his rendering himself and his wife the subject of unpleasant remark and of social depreciation. The necessity of the wife's appearance in two public Courts and the nature of the evidence she would have to give, are further considerations against a charge of this kind being lightly or untruly brought.

Now, it would appear, that the prisoners and the prosecutor are both ryots of the same talookdars, Ramkinkur Chowdry, Oomasunkur Chowdry, Kooloo Chundur Chowdry, Joogul Chowdry, and Kalleekoomar Chowdry, who hold their estate partly *ijmalee*, and partly with definition of boundaries. Oomasunkur Chowdry, Ramkinkur Chowdry, and Kalleekoomar Chowdry, have quarrelled with Kooloo Chundur Chowdry and Joogul Chowdry. A person named Rammanick Kurmocar, who appears to be a tenant of all the talookdars, jointly brought a very petty case of assault against Oomasunkur Chowdry, Kalleekoomar Chowdry and Tareenechurrun Chowdry, which was not only dismissed as false, but the plaintiff punished for bringing it. The prisoner Ramdoolall Deo (No. 1.) who is the ryot of

Kooloo Chundur Chowdry gave evidence before the Magistrate which tended to show that Rammanick's charge was false, and in thus aiding in the acquittal of his landlord's enemy, Oomasunkur is said to have brought on himself the anger of his landlord and the fabrication of the present groundless charge. The prisoner Gunessham Surnah (No. 2.) is a ryot of Ramkinkur Chowdry and although he gave his deposition before the Darogah favorably to Oomasunkur, he did so in common with several others, and not being as his fellow-prisoner is, Kooloo Chundur Chowdry's tenant or guilty of any disloyalty to his landlord and his enmities, it is difficult to understand why the latter was so exasperated against him as to lead to his being included in this very serious charge.

There are, so far as I can learn, three or four more cases of the same petty character between the talookdars, in which as a matter of course, their ryots are more or less involved as witnesses for or against the charge. In one, the plaintiff was fined Rupees 10 and in another Rupees 5, for bringing false and frivolous charges. The other cases are yet undecided but is, I am informed, as petty in its nature as the rest. The pleaders for the defence would have the Court accept these trifling cases as establishing a degree of enmity between the talookdars which has led among its consequences to the institution of so serious a charge as the present against a tenant, who hesitated to take up his landlord's feud and in doing so to set veracity and justice aside as nought.

This, for the reasons I have already stated, I cannot do. The evidence in support of the indictment against the prisoners may be insufficient to establish the crime of rape, although I think otherwise. But the attempt, at least, is, in my opinion, fully proved. The husband, wife and aunt have every outward appearance of respectability. Their evidence was given in a manner indicative of truth, and I cannot set aside the impression the case for the prosecution has excited, on such weak and insufficient grounds for believing the whole charge to be false and malicious as those urged on behalf of the defence. The night is described as having been clear and starlit, and the witnesses Aujoodhaya Nath (No. 2.) Ramguttu Nath (No. 3.) and Ramdoyal Doss (No. 4.) state that they were able to approach quite close to the prisoners and thus to identify them. The aunt Mussumut Kurroona (witness No. 1.) recognized them in the struggle, if such it can be termed, previous to her niece being carried from the house, and named them to the witnesses Aujoodhaya Nath (No. 2.) and Ramguttu (No. 3.) prior to their starting in search of the prosecutor's wife. Thus prepared, a very slight glance would enable them to verify the fact whether the parties had been correctly named to them or not, and this it appears to me they had ample opportunity to do. One of

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the two prisoners Guneshsham Surmah (No. 2,) admits a knowledge that the prosecutor's wife *was* dishonored on the night of the 19th August, though by whom, he knew not. Being however of opinion that the prisoner Ramdoolall Deo (No. 1,) is the individual who committed the outrage aided and assisted by the prisoner Guneshsham Surmah (No. 2,) and that it amounted to actual violation of the prosecutor's wife instead of the attempt only to violate her, I would convict the prisoner Ramdoolall Deo (No. 1,) on the 1st count of the indictment and the prisoner Guneshsham Surmah (No. 2,) of aiding and abetting in the crime specified in that count, and would sentence the former to imprisonment for seven years with labor in irons, and the latter to five years' imprisonment also with labor in irons.

*Remarks by the Nizamut Adawlut.*—(Present: Mr. D. I. Money.) The Sessions Judge has conducted the trial of this case with great care and ability. He has laid open the whole evidence bearing upon the charge, and there is nothing left to the Court, but to determine, after attentively examining and weighing it, whether it supports the conclusion at which he has arrived, and is sufficient for the conviction of the prisoners.

There are no cases so difficult to decide, in this country especially, where false charges are constantly made, and so easily proved, as charges of rape.

It is the more necessary to examine with extreme care the account which the woman herself gives of all the particulars of the outrage, and ascertain how far it is borne out by the statements of other witnesses and all the circumstances of the case. Upon her testimony mainly the Court is obliged to depend for disclosures regarding the degree and extent of the violence that has been used. The credibility of her testimony would depend in a great measure upon the character she has borne. This appears to have been irreproachable, and her manner and demeanour in Court while giving evidence, which came under the personal observation of the Sessions Judge, and are noticed in the 6th paragraph of his letter, entitle her statements to the credit of the Court, unless they can be disproved by other evidence on the record.

Considering the aversion which a modest woman would naturally feel to publish her disgrace, and the wish, with the prospect of loss of caste before her, to conceal it, no time appears to have been lost in giving information to her relatives and the police. This of itself lessens the probability that the case, whatever grounds there may be for the suspicion, was a got-up one.

I concur generally in the remarks made by the Sessions Judge regarding the testimony of the witnesses, the circumstances of the case, and the weight of the whole evidence for

the prosecution, and I agree with him in thinking that the prisoners failed in establishing their defence.

Upon one point only I entertain a great doubt, and that is whether the crime was actually committed. Penetration, if proved, would be sufficient for a conviction on the charge of rape. The *first* statement of the woman, influenced though it might have been by shame, creates the doubt, to which I think the prisoners are entitled. I convict therefore the prisoner No. 1, Ramdoolall Deo of a violent assault with intent to ravish, and the prisoner No. 2, Guneshsham Surmah of aiding and abetting in the same, and seeing but slight difference in the offence of each as to the degree of criminality, sentence them both to four years' imprisonment with labor in irons.

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S U M M A R Y C A S E S.

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SUMMARY CASES.

DECEMBER, 1857.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge*.

No. 120, OF 1857.

BUNWAREEPERSHAD GHOSE, PETITIONER.

VAKEEL OF PETITIONER, MR. R. NORRIS.

The following pleas have been preferred by the petitioner in appeal.

1st.—Notwithstanding my statements have been proved in the opinion of the P. S. Ameen, yet the Magistrate without assigning any reasons in his decision punished me for lodging a false complaint on the ground of my witness's evidence having been contradictory. Hence, such an order cannot be legal and valid.

2nd.—When the charge preferred by me has been proved and established by the decision of the P. S. Ameen, I cannot, under such circumstances be punished for the conflicting evidence of my witnesses.

3rd.—The order of the Lower Court is illegal inasmuch as the Magistrate has not taken my defence previous to the passing of order for my punishment.

The Petitioner was sentenced by the Magistrate to three months' imprisonment for making a false complaint: an appeal was preferred to the Sessions Judge, who, although it was apparent on the record that the petitioner had not been put upon his defence before the sentence was passed, and that therefore the sentence was illegal, allowed the sentence to stand, upon the petitioner's mokhtar consenting to abide by his decision. The consent of the mokhtar cannot do away with the illegality of the proceedings in the Lower Court, and the decision of the Judge, although the mokhtars elected in behalf of his client to abide by it, inasmuch as it confirms an illegal proceeding, cannot stand. The orders therefore of the Lower Courts are reversed, and the Sessions Judge will direct the Magistrate to put the petitioner on his defence before he passes sentence against him.

The petitioner was sentenced to three months' imprisonment by the Magistrate for making a false complaint without being put upon his defence. The prisoner appealed to the Sessions Judge, who affirmed the Magistrate's sentence, upon the petitioner's mokhtar consenting to abide by his decision. The orders of the Lower Court reversed in appeal. Held by the Nizamut Adawlut that the consent of the mokhtar could not do away with the illegality of the Magistrate's proceedings, and that the

decision of the Sessions Judge, although the mokhtar elected in behalf of his client to abide by it, inasmuch as it confirmed an illegal order, could not stand. The Sessions Judge was instructed to direct the Magistrate to put the petitioner on his defence before he passes sentence against him.



PRESENT :

D. L. MONEY, Esq., *Officiating Judge.*

No. 118, OF 1857.

RAMRUTTUN ROY, PETITIONER.

VAKEELS OF PETITIONER, BABOOS KISHENKISHORE  
GHOSE AND SREENATH DASS.

Held that a precept for attachment of property under Clauses 1 and 2, Section 4, Regulation XI. of 1796, was illegal, where the proclamation for attendance required under that Regulation for the purpose of answering to a charge had not been issued in the case under trial, & where the defendant had been allowed to put in an answer through his mokhtar.

A charge of illegal confinement was brought by Grischunder Sircar and Sudrutoolla against Hurnath Roy brother of Ramruttun Roy.

He was allowed to put in an answer to the charge through a mokhtar. On the 7th July, 1857, the mokhtar was directed to bring the defendant before the Court to hear the sentence that should be passed upon him.

The defendant not appearing, on the 18th July, 1857, under the provisions of Clauses 1 and 2, Section 4, Regulation XI. of 1796, a precept was issued to the Collector requiring him to hold certain property belonging to the defendant, under attachment.

Ramruttun Roy and Radhachurn Roy brothers of the defendant, possessing a joint share in the property attached, preferred a petition to the Officiating Sessions Judge against this proceeding. The Sessions Judge after calling for an explanation from the Magistrate rejected the petition principally on the ground that it had not been preferred by Hurnath Roy himself.

The present appeal is against this order, and it is urged on the following grounds:—

1. The property was attached without the issue of a proclamation for the attendance of defendant.

2. The proclamation issued in the case of Callycoomar can never be held valid in the attachment of this case. Moreover, after the issue of the proclamation the Magistrate suspended the personal attendance of defendant.

3. No enquiry was made by the Collector about the property before the attachment, which is contrary to the spirit of the Circular Order No. 28, dated 18th October, 1853.

4. The Magistrate had taken the answer of Hurnath Roy by his mokhtar, his again having attached the property is contrary to the requirements of Construction No 1124.

5. The property attached is joint and the attachment of joint-property is contrary to law.

In considering the order passed by the Officiating Sessions Judge, the question before the Court is not whether he was correct in rejecting the petition of appeal on the ground that it

had not been preferred by Hurnath Roy, although the petitioners may have had a joint interest in the property attached, but whether, after calling for an explanation from the Magistrate, he could uphold his proceedings, if there was any illegality or irregularity in them apparent on the record.

The Magistrate in his explanation states that the precept to the Collector for the attachment of the property was not sent until the proclamation requiring the defendant to appear in his Court had been issued as enjoined by the law.

Now the record shows that this proclamation was issued in *another* case in which Hurnath Roy was defendant and one Tarachand Podar was plaintiff, and admitting even that its operation might be extended so as to bind the defendant in *this* case, which, as it would be an irregular proceeding, I am not prepared to admit, still as the Magistrate's order in that case was reversed, the proclamation was no longer of any force.

Again under Clause 1, Section 4, Regulation XI. of 1796, the publication of such a proclamation is enjoined, when a person charged with a criminal offence upon a process issued against him cannot be found in order that he may appear *to answer the charge against him within a fixed period.*

In this case an answer had already been put in by the defendant through his mokhtar with the permission of the Court. The legal object for which the proclamation is enjoined had been attained. The defendant had *answered* to the charge. He was not therefore bound to attend in the case before the Magistrate in consequence of this proclamation, first, as it was issued in *another* case, in which the Magistrate's order was reversed,—and secondly, as he had given an answer to the charge which was the purpose for which it was issued.

As the attachment of the property is a penalty by the law consequent on non-attendance under the proclamation, and as he was not bound to attend, the penalty of course cannot be enforced, and the attachment must be withdrawn.

Upon these grounds I reverse the orders of the Lower Courts. The Officiating Sessions Judge will direct the Magistrate in proceeding against the defendant Hurnath Roy to attend strictly to the provisions of the law.

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